

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action
	)	No. 13-10200-GAO
	)	
DZHOKHAR A. TSARNAEV, also	)	
known as Jahar Tsarni,	)	
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.  
UNITED STATES DISTRICT JUDGE

**JURY TRIAL - DAY EIGHTEEN**

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Friday, February 13, 2015  
10:54 a.m.

Marcia G. Patrisso, RMR, CRR  
Cheryl Dahlstrom, RMR, CRR  
Official Court Reporters  
John J. Moakley U.S. Courthouse  
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24 On Behalf of the Defendant  
25

P R O C E E D I N G S

1  
2 THE COURT: Good morning, everyone. Thank you for  
3 being here today. We're continuing the process of selecting a  
4 jury for the trial of the case of United States vs. Dzhokhar  
5 Tsarnaev. As you know, Mr. Tsarnaev is charged in connection  
6 with a bombing that occurred near the finish line of the Boston  
7 Marathon on April 15, 2013, that resulted in the deaths of  
8 three people. He is also charged in the death of an MIT police  
9 officer and other offenses occurring on April 18 and 19, 2013.  
02:06 10 Some, but not all, of the crimes charged are, by statute,  
11 potentially punishable by death.

12 You will recall from my prior instructions that the  
13 trial jury will first consider and decide whether the  
14 government has proved Mr. Tsarnaev's guilt of any or all of the  
15 charges against him. If he is convicted of any of the capital  
16 crimes, that is crimes, potentially punishable by death, the  
17 jury will then consider and decide whether he will be sentenced  
18 to death or to life in prison without possibility of release.

19 You may wonder why the death penalty could be a  
02:07 20 possibility in this case in view of the fact that the laws of  
21 Massachusetts do not provide for the death penalty for murder  
22 or any other violation of Massachusetts law. The reason is  
23 that this is a federal case involving alleged violations of the  
24 laws of the United States rather than a state case involving  
25 violations of Massachusetts law.

1           So if the jury convicts Mr. Tsarnaev of any of the  
2 capital crimes charged in the Indictment, the same jury will  
3 hear additional evidence and then decide whether to sentence  
4 him to death or to life in prison without the possibility of  
5 release.

6           Because the jury that is selected to decide the  
7 defendant's guilt or innocence will also decide his punishment,  
8 if he is convicted, it is necessary to question prospective  
9 jurors about your feelings and beliefs about the death penalty  
02:08 10 as part of this process of selecting the jury.

11           Let me explain briefly the procedures that must be  
12 followed in a case in which the death penalty is or may be at  
13 issue. As in any criminal case, initially, the government will  
14 have the burden of proving that Mr. Tsarnaev is, in fact,  
15 guilty of any crime with which he is charged. If he is  
16 convicted by the jury of a crime for which the death penalty  
17 may lawfully be imposed, then there will be a second phase of  
18 the trial, usually referred to in shorthand as the "penalty  
19 phase." In the penalty phase, the government will introduce  
02:08 20 evidence that seeks to prove beyond a reasonable doubt, first,  
21 that the defendant acted with sufficient intent to be subject  
22 to the death penalty; and second, that aggravating factors  
23 about the killings or about the defendant justify sentencing  
24 him to death.

25           Aggravating factors are circumstances that, if proven,

1 make the crimes particularly serious or blameworthy, therefore,  
2 under the law, may justify imposing a more severe sentence on  
3 Mr. Tsarnaev compared to other persons convicted of intentional  
4 killing or murder.

5 The government will bear the burden of proving any  
6 alleged aggravating factors to every juror beyond a reasonable  
7 doubt.

8 The defense will have an opportunity to present  
9 evidence in the penalty phase of what it will argue are  
02:09 10 mitigating factors. Mitigating factors are usually  
11 circumstances about the crime or about the defendant's  
12 background or character that would suggest the death penalty is  
13 not the appropriate sentence in this case or that life  
14 imprisonment without possibility of release is adequate to  
15 punish the defendant. Unlike the proof of aggravating factors,  
16 a mitigating factor must only be proven by the greater weight  
17 of the evidence. That is a less standard of proof than proof  
18 beyond a reasonable doubt.

19 Again, unlike the proof of aggravating factors,  
02:10 20 mitigating factors do not have to be proven to the satisfaction  
21 of all 12 jurors. Any juror who finds or determines a  
22 mitigating factor to be proven by the greater weight of the  
23 evidence may consider that factor in deciding the appropriate  
24 sentence in the case regardless of whether any or all of the  
25 other jurors agree that the mitigating factor has been proven.

1           After the parties have made their preparations during  
2     the penalty phase, the jury will weigh all the evidence.  
3     Before a jury could vote to impose the death penalty, every  
4     juror would have to be persuaded that certain threshold factors  
5     that make Mr. Tsarnaev potentially subject to the death penalty  
6     have been proven beyond a reasonable doubt. In addition, in  
7     order to impose the death penalty, every juror would have to be  
8     persuaded that any proven aggravating factors sufficiently  
9     outweigh any mitigating factors found by any juror or jurors to  
02:11 10    justify a sentence of death. Even if the jury did not find any  
11    mitigating factors in the case, he would still have to be  
12    unanimously persuaded that any proven aggravating factors were  
13    themselves sufficient to justify a death penalty.

14           You should understand that a jury is never required to  
15    sentence a defendant to death. The decision whether the  
16    government has proved that a defendant should be sentenced to  
17    death must ultimately be made by each juror himself or herself.  
18    If, however, every juror is persuaded that the death penalty  
19    should be imposed, I would be required, as the trial judge, to  
02:11 20    sentence the defendant to death. In other words, I could not  
21    change the jury's decision. The jury, and not the judge, is  
22    responsible for determining whether a defendant who is  
23    convicted of a capital crime will live or die.

24           What I've just described is only an overview of the  
25    law applicable to a jury's consideration of the death penalty.

1 If you are selected to serve on the jury, and if you find the  
2 defendant guilty of a crime or crimes punishable by death, then  
3 I will give you very detailed instructions concerning your  
4 duties in deciding whether to impose the death penalty or life  
5 imprisonment without possibility of release and the law that  
6 must be followed in making that decision.

7 When you filled out your questionnaires, you will  
8 recall that we told you that there are no right or wrong  
9 answers to the questions you have been asked. That's true of  
02:12 10 those you will be asked further in this process. We asked them  
11 primarily because both the government and Mr. Tsarnaev are  
12 entitled to a jury that does not have its mind firmly made up  
13 one way or the other before hearing the evidence and a detailed  
14 explanation of the law. That applies both to whether Mr.  
15 Tsarnaev is guilty or not guilty of the specific crimes that  
16 are charged in the Indictment and, if he is convicted of a  
17 capital crime, whether he should be sentenced to death or to  
18 life in prison without the possibility of release.

19 So today I'm going to question each of you  
02:13 20 individually about issues relevant to the selection of a jury.  
21 We're going to have you go back into the room where you were  
22 just awaiting your entry into the courtroom. You'll wait  
23 there, and we'll call you in one by one and ask you some  
24 questions. There will be a few people in the room in addition  
25 to the lawyers and their staffs, and the proceedings will be

1 simultaneously transmitted by audio and video to overflow  
2 courtrooms where there are other people attending.

3 We will not identify you by name but rather by number,  
4 and you will be seated so that the video camera will be behind  
5 you. Your answers will be generally public; but if you believe  
6 that a truthful answer would require you to reveal sensitive,  
7 personal information, we will temporarily stop the audio  
8 transmission to those courtrooms so that the people observing  
9 there will not hear your answer.

02:14 10 Again, we do not want or expect any particular answer  
11 to the questions. All we want and what the law expects is for  
12 you to provide accurate and truthful answers to the questions  
13 you're asked. If you do that, you will be doing your duty as a  
14 citizen and as a juror no matter what the answers may be.

15 I want to take a moment to remind you of some of my  
16 prior instructions. As I told you before, a jury's verdict  
17 must be based on the evidence produced at trial and must be  
18 free of outside influence. Therefore, I remind you again it is  
19 extremely important that you do not discuss the case, including  
02:14 20 the selection process, with your family, friends, each other or  
21 any other person until you have been excused or if you are  
22 selected as a juror, until the case concludes. Again, you are  
23 to avoid any independent research on the case online or  
24 otherwise and to avoid reading, watching, listening to media  
25 reports about the case.



1           When you finished completing the questionnaires, we  
2           asked you to sign the questionnaire under an affirmation that  
3           the answers you had given were true. There's a similar process  
4           for this oral examination. You are required to swear or affirm  
5           that you will give true answers to the questions. And the  
6           clerk will now ask you to stand and administer that oath and  
7           affirmation.

8           (Venire sworn.)

9           THE COURT: All right, jurors. Thank you. We'll ask  
02:15 10          you to step out, and we'll have you back one by one.

11          (The venire left the courtroom at 11:02 a.m.)

12          MR. WEINREB: Your Honor, I don't think we had a  
13          chance to give you these earlier. They're nonissues.

14          THE COURT: Nonissues?

15          MR. WEINREB: Yeah, I think. I don't know if you  
16          agree.

17          MS. CONRAD: I only looked at one of them.

18          THE COURT: There's one.

19          MR. WEINREB: 412.

02:18 20          MS. CONRAD: I think they both answered consistently.

21          MR. WEINREB: I think the other was 440.

22          THE COURT: 440, yeah.

23          MS. CLARKE: 440 is gone.

24          THE COURT: Yeah, right. So this is just a very minor  
25          -- so there's no -- there's agreement on 412, no issue?

1 MS. CONRAD: That's right, yeah.

2 THE COURT: Okay.

3 THE CLERK: Juror No. 412.

4 THE JURY CLERK: Juror 412.

5 THE CLERK: Sir, over here, please, if you would.

6 Have a seat.

7 THE COURT: Good morning.

8 THE JUROR: Morning.

9 THE COURT: Have you been able to avoid any discussion  
02:19 10 of the substance of the case since you were last here and media  
11 reports as well?

12 THE JUROR: I have, yes.

13 THE COURT: Okay. So that's the questionnaire that  
14 you filled out when you were last here.

15 THE JUROR: Yes, looks like it.

16 THE COURT: I'm going to follow up on some of the  
17 questions -- some of the answers you gave us to the questions  
18 we asked, okay?

19 I'd like to start with what you do for a living.

02:20 20 THE JUROR: Self-employed contractor. I grew up as a  
21 kid doing roofing, and that kind of -- once I built my own  
22 home, I expanded my skills off into other areas of construction  
23 so --

24 THE COURT: How long have you been doing it?

25 THE JUROR: Thirty-five, forty years.

1 THE COURT: Do you have a work force that works with  
2 you?

3 THE JUROR: Actually, I used to have employees, but in  
4 the last two and a half years, I have shrunk down to -- I've  
5 taken on a partner, and I work solely with one partner. He's  
6 his own insured contractor himself. We just work as a team.

7 THE COURT: Okay. You'll recall back on Page 5 of the  
8 form, in Question 10, we outlined the schedule that we expect  
9 to follow in the case. It will be four days a week from 9 to  
02:21 10 4, excluding Fridays. On that schedule, it may last several  
11 months. Would that have an impact on your ability to earn a  
12 living?

13 THE JUROR: There would be a little bit of a strain,  
14 financial strain. I'm looking -- I was hoping that I had an  
15 opportunity to take on some night work for a gentleman that I  
16 had become an acquaintance with when I did a project, who's a  
17 CEO of this company that does IT equipment in hospitals, and  
18 it's all night work. When that came about, I thought maybe it  
19 would be very -- take a lot of stress off the family  
02:21 20 financially. If I was involved with any kind of jury service,  
21 then I could work at night so --

22 THE COURT: You're the one that can assess it. I  
23 raise the question because we don't want to impose a serious  
24 hardship, including a financial hardship on you. In other  
25 words, if you can make arrangements to continue working and,

1       therefore, your income in the hours after the day or on Fridays  
2       and weekends, then that's okay, too. But you're really the  
3       judge of that. We can't --

4               THE JUROR: It would be a strain on my income so --

5               THE COURT: Is it a tolerable strain or an intolerable  
6       strain, I guess is the question.

7               THE JUROR: A tolerable strain.

8               THE COURT: Okay. So --

9               THE JUROR: Uncomfortably tolerable.

02:22 10              THE COURT: You're willing to take on the project if  
11       we give it to you?

12              THE JUROR: Yes, yes, sir.

13              THE COURT: All right. You said you just -- we asked  
14       people about social media. You said you're just learning to  
15       use Facebook. Do you use it just personally, socially, or do  
16       you use it in the business at all?

17              THE JUROR: Not in the business at all, no. I'm  
18       actually still trying to learn how to send email from the iPad  
19       that I got for Christmas to my home computer so I can print out  
02:22 20       information. I'm kind of still old school, with a pencil and  
21       paper.

22              THE COURT: You have a brother who was a police  
23       officer in New Hampshire for a number of years?

24              THE JUROR: Yes, sir.

25              THE COURT: Tell us about that. Where was he?

1 THE JUROR: He was 20 years as a sergeant with the New  
2 Hampshire, Hudson, New Hampshire, Municipal Department. He had  
3 been in it probably --

4 THE COURT: What's he doing now?

5 THE JUROR: He's retired now.

6 THE COURT: Let me ask you to turn to Page 20,  
7 Question 77, near the top. In this question we asked you  
8 whether -- if you'd seen or read things in the media that had  
9 led you to form an opinion about whether the defendant was  
02:24 10 guilty or not guilty or should receive the death penalty or  
11 not. It's a multiple part question, and you had the option of  
12 checking "yes," "no," or "unsure," and you checked "unsure."  
13 Would you tell us why you made that selection?

14 THE JUROR: Well, I made that selection due to the  
15 fact that I have two brothers and three sisters. And I was  
16 wondering about, like, the design of the whole act, how -- what  
17 had come about. Was the young man following his brother's --  
18 looking up to his brother as his -- you know, like a model to  
19 follow? And probably just making some really bad decisions due  
02:25 20 to the fact that -- what I can relate to was, like, when I was  
21 a kid -- I have an older brother; he likes to drink. I thought  
22 that was like a really great thing to do. Because my older  
23 brother liked to drink, so I drank.

24 It took a few years for me to, like, grow up and get  
25 that out of my system. And I realized I had lost a few years

1 due to the fact that someone that I looked up to led me in a  
2 direction I probably, you know, would not have been -- gone in  
3 that direction had I had a little more maturity or somebody  
4 different to look up to. So, I mean, I think about that, and  
5 I'm, like, well, I'm unsure. I'm unsure about that question  
6 and that whole situation.

7 THE COURT: So I'm sure you realize, in the criminal  
8 process, that -- in our justice system, when somebody is  
9 accused of a crime, they're presumed to be innocent, or not  
02:26 10 guilty, unless the government proves that they're guilty of the  
11 crime charged and does it by the evidence produced at the  
12 trial. And in order to obtain a verdict of guilty, the  
13 government has to persuade the jury beyond a reasonable doubt  
14 of the fact of the defendant's guilt. Do you understand those  
15 principles?

16 THE JUROR: Yes.

17 THE COURT: What we ask jurors to do is to pay  
18 attention to the evidence at trial, to think about it, talk  
19 about it with the other jurors, and then decide whether, on any  
02:26 20 given charge, the government's satisfied its burden of proving  
21 that charge beyond a reasonable doubt. And the jurors are to  
22 focus only on the evidence at trial and not on information they  
23 might have from any other source. Do you think you would be  
24 able to do that in this case?

25 THE JUROR: My heart tells me probably not.

1 THE COURT: Why?

2 THE JUROR: I have a five-year-old grandson at home,  
3 and I think of the eight-year-old child losing his life. And  
4 it just kind of comes back to me that was a very selfish act of  
5 some people to have robbed a child of their life like that.  
6 And I personally don't think that -- I might hold some -- it  
7 might have some leverage in making a bad decision because of  
8 how I feel about that situation.

9 THE COURT: Okay.

02:27 10 THE JUROR: My grandchild lives with me, and I've  
11 raised him, so I think that's why that -- my feelings towards  
12 the child like that bothers me a little.

13 THE COURT: Okay.

14 MR. WEINREB: Your Honor, I think the parties --

15 THE COURT: All right. Thank you. Appreciate that.  
16 Just leave it there and we'll pick it up. That's all.

17 THE JUROR: Thank you.

18 THE CLERK: Juror No. 435.

19 THE JURY CLERK: Juror 435.

02:28 20 THE CLERK: Sir, over here, if you would, please.  
21 Have a seat.

22 THE COURT: Good morning.

23 THE JUROR: Morning.

24 THE COURT: Since you were last here, have you been  
25 able to avoid any discussion of the substance of the case with

1 anybody?

2 THE JUROR: I have not discussed it, no.

3 THE COURT: And, as much as possible, avoid any media  
4 reporting about the case?

5 THE JUROR: Correct.

6 THE COURT: We're going to follow up on some of the  
7 answers you gave us in the questionnaire. I want to start with  
8 what you do for a living.

9 THE JUROR: I work at Harvard Pilgrim Health  
02:29 10 Insurance. I do accounting, accounts receivable. So the money  
11 coming in, I account for that.

12 THE COURT: Okay. We asked about use of social media,  
13 and this is at the bottom of Page 10, Question 29, and 30, I  
14 guess, on the next page. You said you post messages on  
15 Facebook, and you don't normally discuss serious -- you said  
16 serious topics but more on sports. And what's that? Animal --  
17 no comical subjects.

18 THE JUROR: Uh-huh, yup.

19 THE COURT: Okay. You also use Instagram, I guess.

02:30 20 THE JUROR: Correct.

21 THE COURT: Do you use any of those in your work?

22 THE JUROR: I do not, no.

23 THE COURT: So it's just with friends and family kind  
24 of thing?

25 THE JUROR: Yup, yeah.



1 THE COURT: Let me ask you to turn to Page 20,  
2 Question 77, near the top. If it's convenient to you, feel  
3 free to take the clip off.

4 THE JUROR: Okay.

5 THE COURT: In this question we asked whether you  
6 had -- on the basis of things you'd seen or read in the media  
7 or from other sources whether you'd formed any particular  
8 opinions in the case, including whether the defendant was  
9 guilty or not or whether he should receive the death penalty or  
02:31 10 not. And you checked "no" to each of those, indicating that  
11 you did not have any such opinion. Can you tell us about that?

12 THE JUROR: I mean, I've heard, obviously, about, you  
13 know, through the news, but I don't really know any specifics  
14 of exactly what happened. You know, I would go in with, you  
15 know, a clear conscience. I wouldn't go in with a full guilty.  
16 I didn't know anyone that was down there or anything like that.  
17 So I haven't -- I guess I haven't really heard much about the  
18 case, the specifics.

19 THE COURT: I'm sure you know that, in our criminal  
02:31 20 justice system, when somebody is accused of a crime, they're  
21 presumed to be innocent of the crime they're charged with  
22 unless the government proves them guilty by the evidence at  
23 trial and proves it beyond a reasonable doubt. You're familiar  
24 with those concepts?

25 THE JUROR: Correct.

1 THE COURT: Do you think, if you were a juror in the  
2 case, you could listen to the evidence in the case and decide  
3 whether the government had proved its case or not based on your  
4 evaluation of that evidence along with the other jurors?

5 THE JUROR: Yes.

6 THE COURT: If, on any given charge, you thought the  
7 government's evidence had fallen short of convincing you beyond  
8 a reasonable doubt, would you be able to vote not guilty?

9 THE JUROR: Yes.

02:32 10 THE COURT: Just to confirm, on Page 21, Questions 81  
11 and 82, we asked about whether you had any -- whether you were  
12 personally affected or had any involvement in support  
13 activities, not just you but people close to you.

14 THE JUROR: Uh-huh.

15 THE COURT: You already said it, I guess, but you  
16 didn't --

17 THE JUROR: No, I did not know anyone.

18 THE COURT: It didn't impact you personally in any  
19 way?

02:32 20 THE JUROR: It did not.

21 THE COURT: Or anybody close to you?

22 THE JUROR: No.

23 THE COURT: Beginning on Page 23, at Question 88, we  
24 asked a series of questions to gauge prospective jurors' views  
25 about the death penalty. Question 88 is itself a general

1 question. If you have any views about it in general, what are  
2 they? And you said, "I believe that if the defendant is shown  
3 through evidence to be guilty beyond a reasonable doubt, he  
4 should be sentenced to death for this heinous crime." Is there  
5 anything you want to add or amend about that?

6 THE JUROR: No. Basically, I believe that if, you  
7 know, someone was guilty of, you know, bombing innocent people,  
8 I do believe that they should get the death penalty.

9 THE COURT: Okay. In Question 89, we asked you if you  
02:33 10 could put yourself on a scale of 1 to 10, with 1 being strongly  
11 opposed, thinking the death penalty should never be imposed,  
12 and 10 being strongly in favor, thinking it should be imposed  
13 whenever a defendant has been convicted of an intentional  
14 murder, and you selected 9. Can you tell us why you made that  
15 choice?

16 THE JUROR: I think, if you intentionally hurt other  
17 people, especially in, you know in death, I think you, you  
18 know, deserve, you know, an equal punishment.

19 THE COURT: Yeah. Okay. Then in Question 90, we  
02:34 20 asked if you could find one of the suggested statements that  
21 best represented your views regarding a case where someone has  
22 been proved guilty of murder. You selected (e), "I'm in favor  
23 of the death penalty, but I could vote for a sentence of life  
24 imprisonment without the possibility of release if I believed  
25 the sentence was called for by the facts and the law of the

1 case." Does that represent your view?

2 THE JUROR: Correct.

3 THE COURT: That seems a little bit different from  
4 what you said in answer to the other questions where you seemed  
5 more -- thinking more of it, if the person has been guilty of  
6 an intentional murder, that the death penalty might almost be  
7 automatic afterwards. This seems like you don't necessarily  
8 think it's automatic. I guess -- I wonder if you could explain  
9 where you are on that.

02:35 10 THE JUROR: Do you mind if I just read through it  
11 again?

12 THE COURT: Yes, please. Take your time.

13 THE JUROR: That one just fits my belief the most just  
14 because it's basically saying that you're listening to the  
15 facts and making a judgment on that. If guilty, you know, like  
16 I said, I would be for the death penalty. If, you know, did  
17 not a hundred percent, you know, I may not, you know, life  
18 imprisonment may fit.

19 THE COURT: Let me be sure you're following the  
02:36 20 process we would take. First of all, there would be two phases  
21 to the trial. The first phase would be whether the defendant  
22 is guilty or not of any crime, including any of the charged  
23 capital crimes. In order for the government to prove him  
24 guilty, as we were discussing, the government would have to  
25 prove to the jury beyond a reasonable doubt that, as a matter

1 of fact, the defendant was guilty of the crime charged, okay?  
2 So the jury would then decide that.

3 And if they found him guilty, then you would proceed  
4 to the second phase, which is the penalty phase. So everybody  
5 who enters the penalty phase has already been found guilty of  
6 an intentional murder by the jury. So when the penalty  
7 situation arises, it's dealing with a convicted intentional  
8 murderer.

9 Then, as I said this morning to the group, in the  
02:37 10 penalty phase, there would be additional evidence. The  
11 government would provide evidence of what it will call  
12 aggravating factors or circumstances that made this a  
13 particularly serious, blameworthy crime. The defense would be  
14 able to present evidence of what might be mitigating factors  
15 that show that, in this case of murder for this crime, the  
16 death penalty is not the appropriate punishment but life  
17 imprisonment is instead.

18 And then the jurors would be asked to deliberate on  
19 all that evidence and each of them come to an individual  
02:37 20 assessment and decision about whether the death penalty was the  
21 right punishment to vote for or life in prison, okay? So  
22 that's the process.

23 THE JUROR: Okay.

24 THE COURT: It seemed you might be mixing the guilt  
25 phase and the penalty phase.

1           As you think about the penalty phase then, would you  
2     be able, as statement (e) indicates, to make a decision after  
3     considering all the facts, the aggravating circumstances, the  
4     mitigating circumstances, and after all that, make a decision  
5     without being committed one way or the other, or is your  
6     tendency to favor the death penalty for what you've I think  
7     referred to as a heinous crime? Would that be -- really  
8     exclude a serious consideration of the possibility of life  
9     imprisonment?

02:38 10           THE JUROR: If -- I wasn't aware that there was two  
11    phases like that. If found guilty, I would be for the death  
12    penalty.

13           THE COURT: Regardless of what you heard in the second  
14    phase?

15           THE JUROR: Correct, yeah. If he were guilty of those  
16    crimes, I would favor the death penalty.

17           THE COURT: Let me just ask a little bit further. If  
18    you go to Page 25, at the bottom, Question 95, we asked, If you  
19    found this defendant guilty and you decided the death penalty  
02:39 20    was the appropriate punishment, could you conscientiously vote  
21    for the death penalty? And you said "yes," right?

22           THE JUROR: Correct, yes.

23           THE COURT: On the top of the next page, we asked, If  
24    you found the defendant guilty and you decided life in prison  
25    without the possibility of release was the appropriate

1 punishment, could you vote for life imprisonment without the  
2 possibility of release? And you said "yes" to that.

3 THE JUROR: I wasn't aware of those two phases like  
4 that. I thought guilty there would be two -- I didn't realize  
5 there would be two phases like that. If guilty, I would favor  
6 the death penalty.

7 THE COURT: Okay. So you would change the answer to  
8 96?

9 THE JUROR: I would, correct, after knowing that.

02:39 10 THE COURT: Okay.

11 MR. WEINREB: Your Honor, if I could inquire?

12 Good morning. My name is Bill Weinreb. I'm one of  
13 the prosecutors. I just want to make sure I understand one  
14 thing about your answers clearly.

15 THE JUROR: Okay.

16 MR. WEINREB: Let's put this case aside for a minute.  
17 Now we're just talking in general.

18 THE JUROR: Okay.

19 MR. WEINREB: Do you believe that all cases of  
02:40 20 intentional, deliberate murder deserve the death penalty or  
21 that some are -- some may be deserving of a lesser sentence  
22 than the death penalty, depending on the evidence and the  
23 circumstances?

24 THE JUROR: For an intentional murder, I do believe  
25 that the death penalty is the correct --

1 MR. WEINREB: In every case?

2 THE JUROR: If they're guilty of murder, correct, like  
3 intentional murder.

4 MR. WEINREB: Okay.

5 THE COURT: All right. Thank you, sir. Just leave  
6 the form there. We'll take care of it. Thanks.

7 THE CLERK: Juror No. 441.

8 THE JURY CLERK: Juror No. 441.

9 THE CLERK: Sir, over here, please, if you would.

02:41 10 Have a seat.

11 THE COURT: Good morning.

12 THE JUROR: Morning.

13 THE COURT: Since you were last here, have you been  
14 able to avoid any discussion of the case?

15 THE JUROR: Yes.

16 THE COURT: And, as much as possible, any media  
17 accounts?

18 THE JUROR: Uh-huh.

19 THE COURT: Okay. So that's the form you filled out  
02:42 20 when you were here. Let me just ask you about your employment.  
21 What is it you do?

22 THE JUROR: I'm an auditor but I got -- technically, I  
23 got fired around January 20th for productivity. So I'm  
24 currently unemployed.

25 THE COURT: Are you looking for work now?



1 THE JUROR: Yes. I'm in the process of trying to  
2 collect unemployment and looking.

3 THE COURT: So, as you know, this case may be an  
4 extended case for three or four months. Would that interfere  
5 with your ability to look for employment?

6 THE JUROR: No. I mean, I don't know what I'm -- what  
7 I have access to, you know, to look for a job if I were to be  
8 in it, but other than that, I would be okay.

9 THE COURT: Okay. Well, if a job came up and -- we  
02:43 10 wouldn't want you to have to turn it down.

11 THE JUROR: Yup. I'm not -- I think I can get a  
12 decent job with a little bit of looking for it relatively -- in  
13 a reasonable amount of time.

14 THE COURT: All right. So you don't object to being  
15 considered for the jury?

16 THE JUROR: No, I don't object.

17 THE COURT: Okay. All right. So I see you use  
18 Facebook and Instagram about daily. For just social purposes?

19 THE JUROR: Yeah. I don't post a lot on them. I've  
02:43 20 looked and just fishing through, you know, seeing what's going  
21 on around.

22 THE COURT: Are you using either in your job search?  
23 Do you expect to use either?

24 THE JUROR: Since I lost my job, it's been mainly  
25 talking. I got my auditing job through Indeed. I'm going to

1 do that soon, but I kind of wanted to see where the  
2 unemployment route was going to go first before I try to get  
3 anything concrete. I know I can lock into a job tomorrow if I  
4 went back to CVS or anything like that. I could go work for  
5 retail. I don't particularly want to do that again.

6 THE COURT: So let me ask you to turn to Page 20,  
7 Question 77 --

8 THE JUROR: Yup.

9 THE COURT: -- near the top, we asked whether, based  
02:45 10 on things you'd seen or heard in the media or from other  
11 sources you had formed an opinion that the defendant was guilty  
12 or not guilty on that he should receive the death penalty or  
13 not. And you checked "no" to each of those boxes. Could you  
14 tell us about that?

15 THE JUROR: More now looking back, as a not guilty.  
16 Need to see more evidence, not that, yes, he's guilty or, no,  
17 he's not guilty.

18 THE COURT: Okay. So I think you answered in one of  
19 the earlier questions that you actually had service -- prior  
02:45 20 jury service and it was a criminal case.

21 THE JUROR: Yup.

22 THE COURT: So you're familiar with the principles of  
23 the presumption of innocence and the government's obligation to  
24 prove crimes beyond a reasonable doubt by the evidence at  
25 trial?

1 THE JUROR: Correct.

2 THE COURT: If you were a juror in this case, would  
3 you be able to apply those principles faithfully to the  
4 decision that you would have to make?

5 THE JUROR: Yes.

6 THE COURT: If the government failed in respect of any  
7 of the charges to convince you beyond a reasonable doubt that  
8 the defendant was guilty, would you be able to vote not guilty?

9 THE JUROR: Yes. I could vote not guilty.

02:46 10 THE COURT: On Page 21, we asked about potential  
11 impacts on you or close -- people close to you. You said there  
12 weren't any.

13 THE JUROR: Yeah, nothing, nothing close, no friends,  
14 relatives, really, friends of friends.

15 THE COURT: Beginning on Page 23, at Question 88, we  
16 asked a series of questions about the death penalty and your  
17 attitudes about it. 88 itself is a question about general  
18 views. If you have any views about the death penalty in  
19 general, what are they? And you said you don't have any views  
02:46 20 either way.

21 THE JUROR: Yeah. I mean, very, very neutral on it.  
22 It can be used in certain circumstances or, you know, not used,  
23 whatever. I don't really have any concrete feeling on it.

24 THE COURT: In Question 89, we asked you to give us an  
25 idea of where you might place yourself on a scale from 1 to 10,

1 with 1 being strongly opposed, never impose the death penalty,  
2 and 10 being strongly favor, impose the death penalty whenever  
3 a defendant is convicted of an intentional murder. You put  
4 yourself at 7. Can you explain that answer?

5 THE JUROR: For certain circumstances I would  
6 definitely vote for a death penalty, you know, not throwing it  
7 around for any particular reason. But 7 is the -- I would be  
8 willing to go ahead with it.

9 THE COURT: Okay. On the next page, Question 90, we  
02:47 10 asked it in a different way.

11 THE JUROR: 90?

12 THE COURT: Page 24, Question 90. If it's easier to  
13 look at it -- to unclip it, why don't you take the clip off.

14 THE JUROR: Yeah. That would probably be easier.

15 THE COURT: Here we asked -- instead of numbers on a  
16 scale, we asked you to read a number of different possible  
17 statements and see if there was one that represented what you  
18 think about the matter. And this is whether -- what your  
19 feelings are when somebody has been convicted of murder. You  
02:48 20 selected (d). "I'm not for or against the death penalty. I  
21 could vote to impose it, or I could vote to impose a sentence  
22 of life imprisonment without possibility of release, whichever  
23 I believe was called for by the facts and the law in the case."

24 THE JUROR: Yes.

25 THE COURT: Is that a fair summary of your views on

1 the matter?

2 THE JUROR: Yes. That would be a fair summary.

3 THE COURT: So you would be prepared to make a call  
4 depending on how you assessed the evidence? You heard me talk  
5 about the penalty phase.

6 THE JUROR: I would have to see everything before I  
7 would lean one way or another first. Don't come to any  
8 conclusions until everything is seen.

9 THE COURT: Just a couple more questions. On the next  
02:49 10 page, the bottom of 25, Question 95, putting it in the context  
11 of this case, If you found this defendant guilty and you  
12 decided the death penalty was appropriate, could you  
13 conscientiously vote for the death penalty?

14 THE JUROR: Yes.

15 THE COURT: And on the top of the next page, we asked  
16 a similar question. If you found him guilty and you decided  
17 life imprisonment without the possibility of release was the  
18 appropriate punishment, could you vote conscientiously for that  
19 penalty?

02:49 20 THE JUROR: Yes.

21 THE COURT: And you said "yes."

22 THE JUROR: Yup.

23 THE COURT: So those represent your views?

24 THE JUROR: Uh-huh.

25 THE COURT: All right.

1 MR. WEINREB: Thank you, your Honor. Good morning.

2 THE JUROR: Morning.

3 MR. WEINREB: My name is Bill Weinreb. I'm one of the  
4 prosecutors in the case. I just wanted to follow up on a few  
5 of your answers.

6 THE JUROR: Okay.

7 MR. WEINREB: I may have heard you wrong, but did you  
8 say that you hadn't given a lot of thought to the issue of  
9 death penalty in the past?

02:49 10 THE JUROR: Yeah. I haven't fully looked into it.  
11 It's nothing that I really have wanted to in the past or even  
12 now. I've thought about it, but I'm at that point where it  
13 doesn't really matter to me. I'm not super against it, you  
14 know, don't do it, or super, you know, let's have the death  
15 penalty. I'm kind of neutral on that.

16 MR. WEINREB: Have you thought since -- when did you  
17 first learn that you were -- that this case was the one you had  
18 been summoned for?

19 THE JUROR: About a day or two before. I heard a  
02:50 20 couple of things that it might be for that. I didn't think  
21 really anything about it; and then in my heart, it could be  
22 that case pretty much the night or two before.

23 MR. WEINREB: Since that time, have you given thought  
24 to the idea of you personally serving on a case where the death  
25 penalty is a possibility?

1 THE JUROR: I would have no issues.

2 MR. WEINREB: I guess the question that I really  
3 wanted to get at is if -- if you were on a jury, not in this  
4 case necessarily, just in any case, any case, and the defendant  
5 were convicted, and you moved to the penalty phase and you  
6 heard evidence that convinced you that the death penalty was  
7 the appropriate sentence for a defendant, would you personally  
8 be able to sentence someone to death if you concluded that was  
9 the right sentence?

02:51 10 THE JUROR: Yes, absolutely.

11 MR. WEINREB: Thank you.

12 MR. BRUCK: Good morning.

13 THE JUROR: Good morning.

14 MR. BRUCK: My name is David Bruck, and I am one of  
15 Jahar Tsarnaev's lawyers. And I've just got a few more  
16 questions for you if that's okay.

17 THE JUROR: Go right ahead.

18 MR. BRUCK: UMass Lowell?

19 THE JUROR: UMass Lowell.

02:51 20 MR. BRUCK: Did you ever take a course from a  
21 professor named Horgan, John Horgan?

22 THE JUROR: Not ringing a bell.

23 MR. BRUCK: You told the judge a couple times that  
24 your views on the death penalty are that it's appropriate in  
25 certain circumstances or certain types of cases. I think those

1 are pretty much the words you used.

2 THE JUROR: Uh-huh.

3 MR. BRUCK: Can you give us some examples, what kinds  
4 of cases you're thinking about?

5 THE JUROR: If the case has proven to be motivated or  
6 something behind it or a severe evil act, something that a lot  
7 of people would consider evil, you know.

8 MR. BRUCK: Can you tell me more?

9 MR. WEINREB: Well, your Honor, I don't think he  
02:52 10 should be asked to precommit.

11 THE COURT: I think that's right. I think it's  
12 getting close to that.

13 MR. BRUCK: I'm trying to find out what the juror  
14 meant when he said certain kinds of cases.

15 THE JUROR: Very heinous act.

16 MR. WEINREB: Objection, your Honor. The question was  
17 sustained.

18 THE COURT: Yeah. I think we should get to a  
19 different question.

02:53 20 MR. BRUCK: They're not objecting to you. They're  
21 objecting to me just so we're clear.

22 Okay. Now that we've been talking about it, you've  
23 been talking to the judge a little bit, I guess I want to be  
24 sure about your feelings, if any, about the death penalty in  
25 this case. You know what case you've been called for?



1 THE JUROR: Yes.

2 MR. BRUCK: Do you have -- do you lean either way as  
3 far as whether this case is one that is appropriate for the  
4 death penalty?

5 THE JUROR: I'd have to see everything before I would  
6 know if it's going to lean one way or another. I'm not leaning  
7 anywhere right now, you know. I don't know if -- you know,  
8 guilty, not guilty. I'm unsure until I see all the evidence.

9 MR. BRUCK: Okay. Where were you on April 15, 2013,  
02:53 10 on the day of the bombing?

11 THE JUROR: I don't know. I was seeking employment at  
12 that time. I got hired the following June after that.

13 MR. BRUCK: I guess what I'm really asking you: Do  
14 you remember where you were when you heard about it?

15 THE JUROR: Maybe at my girlfriend at the time's  
16 house.

17 MR. BRUCK: Do you remember people talking about it  
18 that day when the bombing first occurred?

19 THE JUROR: A little bit, you know, what had happened.

02:54 20 MR. BRUCK: How did you feel when you heard about it?

21 THE JUROR: You know, that act occurred, you know.  
22 That's not -- you know, not good. I wasn't, you know, too into  
23 it or not. I wasn't angry or anything like that. I was just  
24 kind of disappointed.

25 MR. BRUCK: Sure. What about the following Friday,

1 the day that people sheltered in place during the manhunt. Do  
2 you remember that day?

3 THE JUROR: Not in depth, no, but I'd get updates,  
4 look at the TV once in a while.

5 MR. BRUCK: Where were you living at the time?

6 THE JUROR: The current house I'm in now, in Woburn,  
7 Mass. I was staying with a girlfriend in Stoneham back and  
8 forth a little bit.

9 MR. BRUCK: Did that -- the activities of -- the  
02:55 10 police activities and everything that day and the  
11 shelter-in-place order, did that affect your activities that  
12 day?

13 THE JUROR: No, no.

14 MR. BRUCK: In any way at all?

15 THE JUROR: No.

16 MR. BRUCK: That's all I have. Thank you.

17 THE JUROR: Thank you.

18 THE COURT: All right, sir. Thank you. Just leave  
19 those there. We'll pick them up.

02:56 20 THE CLERK: Juror No. 444.

21 THE JURY CLERK: Juror 444.

22 THE CLERK: Ma'am, over here, please. Have a seat  
23 right here.

24 THE COURT: Good morning.

25 THE JUROR: Good morning.

1 THE COURT: Since you were last here to fill out the  
2 questionnaire, have you been able to avoid discussion of the  
3 substance of the case?

4 THE JUROR: Yeah.

5 THE COURT: And media reports about the case?

6 THE JUROR: No.

7 THE COURT: No, you haven't seen them?

8 THE JUROR: No, I haven't. I haven't been paying  
9 attention.

02:57 10 THE COURT: Yes, okay. So when you filled out the  
11 form anyway, you told us you were recently unemployed. Is that  
12 continuing?

13 THE JUROR: Uh-huh.

14 THE COURT: Are you -- you have to answer with a word  
15 so that the reporter can write down yes or no.

16 THE JUROR: Yes, yes.

17 THE COURT: Okay. Sorry.

18 Are you actively looking for work now or are you --

19 THE JUROR: I've applied with a temp agency.

02:58 20 THE COURT: I'm sorry?

21 THE JUROR: I've applied with a temp agency. I am  
22 working part time. I'm a free-lance reporter for the paper so  
23 I write occasionally.

24 THE COURT: Right. I see you've done it for several  
25 papers, it looks like, according to --

1 THE JUROR: Yes.

2 THE COURT: Are there any particular ones you're  
3 working with now?

4 THE JUROR: I write for the Boston Globe North  
5 section, so I'm doing that right now. That's the only one I'm  
6 working for.

7 THE COURT: What kinds of stories do you write?

8 THE JUROR: I write arts and human interest stories  
9 mostly.

02:58 10 THE COURT: You know what the plan is for the case,  
11 how we plan to have our schedule, four days a week, 9 to 4, and  
12 so on?

13 THE JUROR: Yes.

14 THE COURT: On that schedule, it may last three or  
15 four months possibly.

16 THE JUROR: Yes.

17 THE COURT: Is that going to impact you in your work  
18 life in a way that would cost you money?

19 THE JUROR: Well, it will interfere with my job search  
02:59 20 if I find an opportunity that would be, you know, a viable way  
21 for me to make a living.

22 THE COURT: Are you looking for something particular  
23 in the search? You recently were an English language teacher.

24 THE JUROR: Yes.

25 THE COURT: Are you looking for something similar or

1 are you kind of casting the net widely to see what might be  
2 there?

3 THE JUROR: I'm focusing on international education  
4 related fields, nonprofits, and the arts mostly in Boston.

5 THE COURT: Okay. Well, what do you feel about the  
6 prospect of being a juror on the case for a few months?

7 THE JUROR: To be honest, it's pretty nerve-racking,  
8 the idea, but I don't know. There's a part of me that is  
9 intrigued by it as somebody who's a writer and, you know, and a  
03:00 10 teacher, and who's worked with students similar to the person  
11 here who we're talking about.

12 THE COURT: So if you were ultimately selected to be a  
13 juror on the case, your disposition would be that you would be  
14 prepared to do it notwithstanding the other issues going on?  
15 Is that what I'm hearing or not? Tell me if that's not the  
16 case.

17 THE JUROR: I think I would -- yes, I would be  
18 prepared to do it.

19 THE COURT: We've been asking people about their use  
03:00 20 of social media. You say you use Facebook about once a week,  
21 something like that.

22 THE JUROR: Yeah. I try to avoid it but it's there,  
23 so I use it once in a while.

24 THE COURT: Let me ask you to turn, if you would, to  
25 Page 20, Question 77 at the top. Here we asked whether, based

1 on things you'd seen or read in the media or that you had  
2 learned from other sources, had you formed an opinion about  
3 whether the defendant was guilty or not or should receive the  
4 death penalty or not, and you answered "unsure" to each of  
5 those subparts of the question. Can you tell us about that?

6 THE JUROR: Well, I just -- I put that because I'm not  
7 sure about his motivations and his psychological state and his  
8 relationship with his brother. I know what the media told me,  
9 but I don't know the whole story really so --

03:02 10 THE COURT: Well, you know from this morning, as I  
11 described it, the case, if it went the full distance, would  
12 have two phases. The first would be concerned with whether  
13 he's guilty of the crimes he's charged with or not; and the  
14 second phase, if he was guilty of a capital crime, whether the  
15 penalty should be a death sentence or life in prison without  
16 the possibility of release.

17 So focusing on the first phase, it's not surprising  
18 that people have learned things about these events from the  
19 media coverage. What we ask jurors in a criminal case to do  
03:02 20 though is first to presume that the defendant is innocent and  
21 require the government to prove to them by the evidence that  
22 he's guilty. The government's burden is to prove that beyond a  
23 reasonable doubt. So the burden is always on the government to  
24 carry that burden in order to obtain a conviction. You're  
25 familiar with those principles, I presume?

1 THE JUROR: Yes.

2 THE COURT: Focusing on that first phase, would you be  
3 able as a juror to perform those -- to perform your service in  
4 accordance with those principles and require the government to  
5 prove its case to you beyond a reasonable doubt?

6 THE JUROR: Yes.

7 THE COURT: Without presuming the defendant guilty of  
8 anything?

9 THE JUROR: Yes.

03:03 10 THE COURT: And we're going -- we'll turn to the death  
11 penalty questions in a minute because there's a series about  
12 that. But I want to ask you about your answer to Question 80  
13 at the bottom of that page.

14 THE JUROR: Uh-huh.

15 THE COURT: This is about a former coworker. Where  
16 was she a coworker with you? Was that in your teaching?

17 THE JUROR: This was someone I worked with at  
18 Montserrat College of Art. I was doing a free-lance writing  
19 position for them where I was going in part time. And she told  
03:03 20 me that she had this firsthand experience at the bombing.

21 THE COURT: When did you talk with her about that?

22 THE JUROR: It was last year around this time, I  
23 guess.

24 THE COURT: So it wasn't in the immediate aftermath?  
25 It was sometime after that?

1 THE JUROR: No. It was after that. It was because I  
2 was working on a story for the college that involved a graphic  
3 artist who designed T-shirts to -- like, a Boston Strong type  
4 of T-shirt, and he was connected to the art school. So it came  
5 up.

6 THE COURT: Is there anything more about this  
7 conversation or what you know about her that you think we  
8 should know?

9 THE JUROR: No, I don't think -- I don't think  
03:04 10 anything else.

11 THE COURT: On the next page, we asked about you or  
12 people close to you, whether you were affected -- that's  
13 Question 81 -- whether you were personally affected in any way  
14 by the events. For example, some people had to stay in on the  
15 -- you may recall the Friday. I guess you said "not  
16 applicable." You weren't affected in any way?

17 THE JUROR: I live on the North Shore, and I -- it  
18 didn't affect me in the way that it affected people who were  
19 living in Watertown or in the immediate area.

03:05 20 THE COURT: You made a contribution to the One Fund,  
21 the next question?

22 THE JUROR: Yes, just one contribution, yeah.

23 THE COURT: So at Page 23, beginning at Question 88,  
24 we ask a series of questions to get an idea of your views about  
25 the death penalty. And Question 88 is a -- asks whether you



1 have any views on the death penalty in general, and you wrote,  
2 "I am against the death penalty."

3 THE JUROR: Right, yes, I am.

4 THE COURT: In the next question, we asked you to see  
5 if you could select a number on a scale that kind of gauged  
6 where you were, with 1 strongly opposed would be a circumstance  
7 where you believed that the death penalty should never be  
8 imposed; and 10, at the other end, where you believed it should  
9 be imposed whenever a defendant is convicted of murder. You  
03:06 10 selected 3. You think that's --

11 THE JUROR: Yes.

12 THE COURT: Can you tell us why?

13 THE JUROR: It's a difficult scale to work with  
14 really.

15 THE COURT: You're right about that.

16 THE JUROR: There's, like, these shades of -- I'm  
17 against it just because I'm a pacifist, and I'm somebody who  
18 believes that everybody has the right to life. I'm against  
19 abortion for the same reasons. It's -- I was raised in a  
03:06 20 Christian household. So it's just what I was -- it's part of  
21 my background.

22 THE COURT: If you look at Page 24, Question 90, this  
23 is a little less clumsy than the previous numerical scale.  
24 This asks you in words whether there was a statement that you  
25 thought represented your views about the death penalty for

1 somebody convicted of murder. You chose (b). "I'm opposed to  
2 the death penalty and would have a difficult time voting to  
3 impose it even if the facts supported it."

4 THE JUROR: Yes.

5 THE COURT: I just want to see if there's a reason  
6 why, given what you've just said, you didn't choose (a).

7 THE JUROR: Well, I guess there's a shadow of a doubt  
8 in my mind. I've never been put in this position before where  
9 I had to -- you know, to vote, like, on something like this.

03:07 10 THE COURT: Right.

11 THE JUROR: You know, it's not a black and white for  
12 me. There's a little bit of a shade of gray.

13 THE COURT: So you heard me this morning describe what  
14 would be the penalty phase if the defendant was convicted of a  
15 capital crime, where the jury would be presented with evidence  
16 that might tend to show it was a particularly serious and  
17 blameworthy crime. That would be the aggravating factors by  
18 the government. And on the other hand, there might be  
19 mitigating factors about the defendant or other things about  
03:08 20 the events that might tend to argue against the death penalty  
21 and in favor of a life imprisonment. Then we'd ask the jurors  
22 to assess all that they had heard in the penalty phase and make  
23 a choice based on that evidence about what was the right  
24 punishment that each juror thought was appropriate.

25 Would you, in that process, be receptive to the

1 possibility that you could vote in either direction, or would  
2 you be, because of your opposition to the death penalty, pretty  
3 much disposed not to vote for the death penalty?

4 THE JUROR: I really -- it's a really -- it's hard to  
5 say. I mean, I -- I think it would take a lot to change my  
6 mind, frankly.

7 THE COURT: To change your mind?

8 THE JUROR: My conviction about the death penalty  
9 being wrong for anybody.

03:09 10 THE COURT: Okay. Let me ask you to look at the  
11 bottom of Page 25, Question 95. There, putting it in the  
12 context of this case, if you found this defendant guilty and  
13 decided that the death penalty was an appropriate -- was the  
14 appropriate punishment for him, could you conscientiously vote  
15 for the death penalty? And you wrote "not sure."

16 And if you want to look at the next question on the  
17 next page, kind of the parallel question. If you found him  
18 guilty and you decided life imprisonment without possibility of  
19 release was the appropriate punishment, could you  
03:09 20 conscientiously vote for life imprisonment without the  
21 possibility of release? And you said "yes" to that. So a  
22 little contrast between "yes" to that and "not sure" to the  
23 other. I just want to -- do you want to talk about that  
24 difference?

25 THE JUROR: It just is more clear-cut in my mind that

1 I feel now that life imprisonment would be the best punishment  
2 for him. I mean, it would take a lot for me to change my mind  
3 on that.

4 THE COURT: Okay. The lawyers will have some  
5 follow-up questions.

6 MR. WEINREB: Good morning.

7 THE JUROR: Good morning.

8 MR. WEINREB: My name is Bill Weinreb. I'm one of the  
9 prosecutors in the case. I just wanted to ask you a few  
03:10 10 additional questions. Turning back to Question 80, it's on  
11 Page 20.

12 THE JUROR: Okay.

13 MR. WEINREB: You mentioned you were writing an  
14 article at the time that your friend told you about her  
15 experience.

16 THE JUROR: It was a -- it was a blog posting on an  
17 alum from this art school who had gone on to start a graphic  
18 arts business and who had made T-shirts for -- to raise money  
19 for the Marathon victims.

03:11 20 MR. WEINREB: When you say it was a blog, is it --

21 THE JUROR: A blog article.

22 MR. WEINREB: A blog article.

23 THE JUROR: Yeah, on the college website.

24 MR. WEINREB: Did you do research for the article?

25 THE JUROR: I interviewed the artist. That was all I

1 did. And I looked at his website and saw that he had raised  
2 money for the Marathon victims. That was it.

3 MR. WEINREB: Did the article talk about the victims  
4 themselves or what he had done for them or --

5 THE JUROR: Nobody specifically.

6 MR. WEINREB: What exactly was it about; can you tell  
7 us?

8 THE JUROR: My article?

9 MR. WEINREB: Yes.

03:11 10 THE JUROR: It was just a profile -- it was a success  
11 story of somebody who graduated from this arts college and has  
12 gone on to start a successful graphic arts business and focused  
13 more on that.

14 MR. WEINREB: Got you.

15 On this issue of the death penalty --

16 THE JUROR: Uh-huh.

17 MR. WEINREB: So turning to your answer to Question  
18 88, how long has that been your view that you're against the  
19 death penalty?

03:12 20 THE JUROR: It's just sort of an engrained viewpoint  
21 that I've held my whole life, I guess. I haven't ever had to  
22 think about it in such a -- you know, a relevant way before but  
23 --

24 MR. WEINREB: You mentioned that one reason you're  
25 against it has to do with your religion.

1 THE JUROR: Uh-huh.

2 MR. WEINREB: Can you say more about that?

3 THE JUROR: Well, I'm a Christian, and I believe that  
4 life is a gift from God and that it's wrong for anybody to take  
5 that away from somebody, whether it be murdering somebody, you  
6 know, like in the Marathon bombing, or whether it be killing  
7 somebody who committed the crime of the Marathon bombing. I  
8 think that killing somebody is wrong no matter what.

9 MR. WEINREB: When you say "wrong," by that do you  
03:13 10 mean, like, immoral?

11 THE JUROR: Yes.

12 MR. WEINREB: So -- and you extend that to taking --  
13 basically to sentencing somebody to death? That's taking  
14 somebody's life in the same way that a murderer takes  
15 somebody's life?

16 THE JUROR: Yes. I see them as one and the same, I  
17 guess. It just seems like it's punishing the crime with  
18 another crime in my eyes.

19 MR. WEINREB: So if I understand you right, believing  
03:14 20 that it's immoral, as you say, and that it's essentially like  
21 murder to sentence somebody to death, can you really envision  
22 yourself ever sentencing somebody to death?

23 THE JUROR: No, I really can't. Sitting here right  
24 now in front of you and thinking about it, I can't imagine that  
25 I could do that.

1 MR. WEINREB: Okay. So when you said earlier that you  
2 don't like to be black and white and that there's a sort of a  
3 shadow of a doubt, were you saying that you're wavering in your  
4 conviction as to whether the death penalty is immoral or not or  
5 just that nobody can ever know anything? You can't be 100  
6 percent certain about anything?

7 THE JUROR: I guess I'm just -- I'm just thinking that  
8 I don't know the whole story, and there's a part of me that  
9 just -- maybe the journalist in me that just wants to hear --  
03:15 10 before I make a judgment call, to hear the whole story.

11 MR. WEINREB: Fair enough. So one of the things we're  
12 trying to figure out here though is whether -- whether your  
13 moral views against the death penalty, your belief that it's  
14 like murder to sentence someone to death, whether that would  
15 really impair your ability to realistically consider you  
16 personally putting somebody to death even if the evidence were  
17 strong in your mind.

18 THE JUROR: Right.

19 MR. WEINREB: Can you answer that for us? Do you  
03:15 20 think that it would impair you in the sense that in any  
21 case you would be --

22 MR. BRUCK: Objection. I think -- impairment is a  
23 legal issue.

24 THE COURT: I'm not sure the juror understands it as a  
25 legal matter. I think you can answer that in the plain English

1 sense of the word. There is some legal gloss on it, but I  
2 think you can have it as a plain English question.

3 MR. WEINREB: In other words --

4 THE JUROR: No. I understand. I'm just thinking.

5 MR. WEINREB: Yeah.

6 THE JUROR: I really -- I don't think -- I think any  
7 conviction should be questioned. I mean, I don't see myself as  
8 a close-minded person, so that's why I didn't put the black or  
9 white, one end of the scale or the other. I mean, I don't  
03:16 10 know. I might change my mind about it.

11 MR. WEINREB: Well, again, I realize we're talking  
12 about things that are -- it's hard to predict how you would  
13 feel about something in the future, but this is our one chance  
14 to ask you and sort of get a sense of your best judgment on the  
15 issue. And that's why I'm pressing it a bit.

16 And what I'm really trying to get at, and my question  
17 is, when you say you don't like to be black or white or you  
18 don't want to be 100 percent one way or the other way, can you  
19 really envision yourself giving up this -- or setting aside  
03:17 20 this conviction that the death penalty is immoral and is like  
21 murder and sentencing someone to death regardless of the  
22 evidence that you heard?

23 THE JUROR: I think it would take a lot. That's all I  
24 can say. It would really -- it would take a lot to change my  
25 mind.



1 MR. WEINREB: And what -- can you envision --

2 THE JUROR: I don't know. I really don't know what  
3 this case is about.

4 MR. WEINREB: I'm not talking about this case. I'm  
5 just talking about any case. Can you envision circumstances  
6 that would change your mind?

7 THE JUROR: I already answered. I don't -- I really  
8 -- I don't know. Maybe --

9 MR. WEINREB: I'm asking --

03:18 10 THE JUROR: Yes, maybe. Maybe I could envision  
11 something that would make me change my mind.

12 MR. WEINREB: What would you envision that could  
13 change your mind?

14 THE JUROR: The idea of spending your life in prison  
15 isn't that much more fulfilling than being killed in a way. I  
16 mean, I don't know.

17 MR. WEINREB: I mean, you can take a moment and think  
18 about it.

19 THE JUROR: Is he going to be up for parole at all?  
03:18 20 Is there a chance that he might get out of prison and have a  
21 life for himself? Are we talking about, like, he's going into  
22 prison for the rest of his life with no chance for parole?

23 MR. WEINREB: The latter.

24 THE JUROR: That's it. There's no room.

25 MR. WEINREB: No room. Those are the two options:

1 death or the life without any possibility of release.

2 THE JUROR: Then, in my mind, there's more room for  
3 the death penalty because it almost changes my viewpoint.

4 MR. WEINREB: Okay. But what I'm asking here is a  
5 slightly different question, which is, can you envision a crime  
6 that would be so bad or circumstances about a murder that would  
7 be so bad that it would justify murdering somebody else, the  
8 defendant?

9 MR. BRUCK: Objection to "murdering somebody else."

03:19 10 MR. WEINREB: Just using the defendant -- the juror's  
11 own words.

12 THE JUROR: I think you're just asking me the same  
13 question over and over again.

14 MR. WEINREB: I'm trying to actually get you to tell  
15 use what the circumstances would be that would -- what would be  
16 a heinous enough crime in your mind, if any?

17 THE JUROR: If I believed that he -- well, for  
18 example, right now, just looking at the case as I've seen in  
19 the media, I see it as something where he's a young -- he's a  
03:19 20 younger brother and that he was influenced by his older brother  
21 and that -- as I'm looking at it now, I'm seeing it as that the  
22 older brother was more of the mastermind. But in the course of  
23 the trial, something swayed me and changed my mind and I, you  
24 know, I learned that he was more of the mastermind in the  
25 trial, perhaps there would be more of a sense that he deserves

1 something like that. As things stand now, I would not vote for  
2 the death penalty, and I would -- I don't know. I mean, it's  
3 sad to me even that there's not a chance of parole for him but  
4 -- but I -- that's --

5 MR. WEINREB: You know you're here for this case, and  
6 so you keep answering about this case, and that's perfectly  
7 understandable. There's nothing wrong with that.

8 I'd like to ask you though a slightly different  
9 question which has to do with any case, not this case. Putting  
03:20 10 aside this case, can you imagine circumstances under which  
11 somebody who had committed a murder should be sentenced to  
12 death?

13 MR. BRUCK: I think that's been asked and answered.

14 THE JUROR: I've already told you.

15 THE COURT: I think we've been over it.

16 MR. WEINREB: Excuse me one second.

17 THE COURT: Yeah.

18 (Discussion held off the record.)

19 MR. WEINREB: Okay. Thanks very much.

03:21 20 THE COURT: Go ahead.

21 MR. BRUCK: When we started, it would have been good  
22 morning, but it's now good afternoon.

23 THE JUROR: Good afternoon.

24 MR. BRUCK: I'm David Bruck, and I'm one of Jahar  
25 Tsarnaev's lawyers.

1 I know you've been asked a lot of questions about  
2 this, but I just want to see if we can get some clarity at the  
3 end. You said that the journalist in you has a response to the  
4 situation of curiosity. What I think we're really asking is  
5 whether there's a juror in you by which the law means someone  
6 who can put their personal views, no matter how strong, to one  
7 side, not forget about them or change them but just put them to  
8 one side and be guided by the evidence in the case.

9 That's what this is about, and that's what I want to  
03:22 10 ask you. On the issue of the death penalty, understanding your  
11 strongly held views, could you put your views to one side and  
12 serve as an impartial juror that -- by which we mean paying  
13 attention to the evidence in favor of the death penalty, the  
14 evidence against the death penalty, and make your decision  
15 based on the evidence in the case.

16 THE JUROR: No, I don't -- I don't think I could. I  
17 think that my viewpoint is too much of a conviction for me.

18 MR. BRUCK: Just to be clear about one last thing --  
19 and I won't belabor this -- but a juror never has to vote for  
03:23 20 the death penalty. It's not as though there are some facts,  
21 once proven, the judge will say, All right. That's it, jury.  
22 Go out and come back with the death penalty. In the end, the  
23 jurors always have to make and get to make their own decision  
24 one at a time, individually. So -- and if your decision was  
25 that the death penalty was not the right thing to do, you would

1 always be legally allowed to do it. So I don't want you to --

2 MR. WEINREB: Objection, your Honor.

3 THE COURT: Yeah. I think we need a question.

4 MR. BRUCK: The question is: Understanding that you  
5 could always vote one way or the other based on the evidence --  
6 that was really what I was asking -- could you go for the death  
7 penalty or against the death penalty based on the evidence in  
8 the case?

9 THE JUROR: Yes.

03:23 10 MR. BRUCK: Okay. There was a difference between the  
11 answer you gave me and the one --

12 THE JUROR: Well, the question seemed different to me.

13 MR. BRUCK: Tell me.

14 THE JUROR: You're saying that I could still vote for  
15 the death penalty if I felt like it was the right choice.

16 MR. BRUCK: Right, or for life if you thought that was  
17 the right choice.

18 THE JUROR: Right. How does it work if -- if one  
19 person votes against the death penalty in the jury, then what  
03:24 20 happens?

21 MR. BRUCK: It has to be unanimous for the death  
22 penalty or there's no death penalty.

23 THE JUROR: Right, okay. So my answer --

24 MR. BRUCK: Is?

25 THE JUROR: -- stands that I -- if I could still keep

1 my conviction -- I honestly don't know if anything would change  
2 my mind or not. But as things stand now, I feel that the death  
3 penalty is wrong, but there's a chance that I might change my  
4 mind.

5 MR. BRUCK: You'd change your mind based on what? On  
6 the evidence in the case?

7 THE JUROR: Uh-huh.

8 MR. WEINREB: Objection, your Honor.

9 THE COURT: All right.

03:25 10 THE JUROR: Sorry. I don't know if I was clear on  
11 this.

12 MR. BRUCK: No. I appreciate it.

13 THE COURT: Thank you very much. You're all set.  
14 Thanks.

15 THE CLERK: Juror No. 447.

16 THE JURY CLERK: Juror 447.

17 THE CLERK: Ma'am, over here, please, if you would.  
18 Have a seat.

19 THE COURT: Good afternoon.

03:26 20 THE JUROR: Good afternoon.

21 THE COURT: Since you were here last to fill out the  
22 questionnaire, have you been able to avoid any discussion of  
23 the case?

24 THE JUROR: Yes, I have.

25 THE COURT: And, as much as possible, any media

1 reports about it?

2 THE JUROR: Yes.

3 THE COURT: So we're just going to follow up on some  
4 of the answers you gave us. Let's start by talking about your  
5 work. You are, it looks like, an office --

6 THE JUROR: Administrative assistant for the  
7 Department of Executive Office of Work Force Development.

8 THE COURT: Okay. The usual office-type work?

9 THE JUROR: Phone calls, answering the phones, faxing,  
03:27 10 anything else that needs to be done.

11 THE COURT: Okay. You've been doing that for?

12 THE JUROR: Fourteen years.

13 THE COURT: Yeah, quite awhile. You would have no  
14 difficulty if you were asked to serve on a lengthy case like  
15 this?

16 THE JUROR: The only difficulty I would have is my  
17 kids. I'm a single parent to two girls. So there would be  
18 some difficulty there, but other than that --

19 THE COURT: Is it manageable or is it something --

03:27 20 THE JUROR: My parents help me out.

21 THE COURT: Are they local?

22 THE JUROR: They are, yes.

23 THE COURT: You know that the normal trial day would  
24 be 9 to 4. It wouldn't be an unusual --

25 THE JUROR: Yup, that would be reasonable.

1 THE COURT: Okay. I don't know how significant it is,  
2 but we've been asking people about their use of social media.  
3 You use Facebook --

4 THE JUROR: I do.

5 THE COURT: -- on a daily basis almost?

6 THE JUROR: I do, yes.

7 THE COURT: Family and friends kind of things?

8 THE JUROR: Yes.

9 THE COURT: Any other use?

03:28 10 THE JUROR: No.

11 THE COURT: Let me ask you to look at Page 20. If  
12 it's easier for you to deal with it, you can take the clip off  
13 and separate the -- Question 77, near the top of the page,  
14 there we asked whether, based on things you'd seen or read in  
15 the media or learned from other sources, had you formed an  
16 opinion that the defendant was guilty or not or that he should  
17 receive the death penalty or not. And to Part (a) you answered  
18 "no." And to the other parts you answered "unsure." Could you  
19 tell us about your answers?

03:29 20 THE JUROR: I think -- I think that every case is  
21 different, and I think that, unless you hear all the  
22 information and you need to hear everything in the case before  
23 you can make a decision if someone is guilty or if they're  
24 innocent. Not every case is black and white. There's a lot of  
25 things that go on.



1 THE COURT: So you understand, I'm sure, that in our  
2 criminal justice system, if a person is accused of a crime, the  
3 person is presumed innocent of that crime --

4 THE JUROR: Yes.

5 THE COURT: -- unless and until the government proves  
6 otherwise -- proves him guilty at the trial by the evidence at  
7 trial and proves it beyond a reasonable doubt. Those are  
8 familiar concepts to you?

9 THE JUROR: Uh-huh.

03:30 10 THE COURT: It's not surprising people have heard  
11 about things -- about the events that underlie this case and  
12 have some impressions about it. What we ask jurors to do is to  
13 set those ideas aside and pay attention to the body of evidence  
14 that's produced in the course of the trial and make judgments  
15 about that. Would you be able to do that?

16 THE JUROR: Yes.

17 THE COURT: If the government, on any given charge,  
18 failed to satisfy you beyond a reasonable doubt that the  
19 defendant was guilty of that charge, would you be able to vote  
03:30 20 not guilty?

21 THE JUROR: Yes.

22 THE COURT: On Page 21, we asked a couple of questions  
23 about whether you or anybody close to you were personally  
24 affected by the events of the Marathon bombings. You said  
25 "none." No personal impact on you?

1 THE JUROR: No, uh-umm.

2 THE COURT: You didn't participate in any of the  
3 after-the-fact support activities, One Fund, Boston Strong or  
4 anything like that?

5 THE JUROR: Nope.

6 THE COURT: So beginning at Page 23, Question 88, we  
7 asked a series of questions about jurors' attitudes about the  
8 death penalty, so I want to run through those. 88 was itself a  
9 general question. If you had general views, what were they?

03:31 10 You wrote that each criminal has different circumstances, and  
11 this case should, I guess, look at all the evidence.

12 THE JUROR: Yeah.

13 THE COURT: Tell me -- wait a minute.

14 THE JUROR: Sorry.

15 THE COURT: There were a couple of crossouts. Why  
16 don't you read it for us.

17 THE JUROR: "Each criminal is different circumstances  
18 and that this case should have -- look at all the evidence  
19 before the sentence of death came up. And before I made a  
03:31 20 decision, I would have to look at everything and listen to  
21 everything."

22 THE COURT: Let's step away from what you wrote. Tell  
23 us what your general views about the death penalty are.

24 THE JUROR: The same thing, that each case is  
25 different, that each criminal is different, and that, you know,

1 depending on what the evidence shows, that's how I would base  
2 my decision on, not on what I've heard or what I've seen or  
3 anything else.

4 THE COURT: Okay. In the next question, we asked if  
5 you could put yourself on a scale, this is -- no, Question  
6 89 -- from 1 to 10, with 1 being strongly opposed, would never  
7 vote to impose the death penalty; and, strongly favor, would  
8 always vote to impose the death penalty when someone was  
9 convicted of murder. You put yourself somewhere in the middle.

03:32 10 THE JUROR: Because I'm not really sure where I stand  
11 on that. I'm not going to say that I think it should be. I'm  
12 not going to say I'm strongly opposed to it. I'm in the middle  
13 of it.

14 THE COURT: Now, let's go to the next page, Question  
15 90. There we ask a little differently by giving you a number  
16 of statements you might agree or disagree with and asked if one  
17 of those represented fairly your own views about the imposition  
18 of the death penalty in a case where someone has been guilty of  
19 murder. You chose (d). It says, "I'm not for or against the  
03:33 20 death penalty. I could impose it or I could vote to impose a  
21 sentence of life imprisonment without the possibility of  
22 release, whichever I believed was called for by the facts and  
23 the law in the case.

24 THE JUROR: Yes.

25 THE COURT: Does that represent your view?

1 THE JUROR: Yes.

2 THE COURT: If you go to the next page, 25, at the  
3 bottom, Question 95, we put it in the context of this case now.  
4 If you found this defendant guilty and you decided that the  
5 death penalty was the appropriate punishment for him, could you  
6 conscientiously vote for the death penalty? You said "not  
7 sure."

8 THE JUROR: I honestly don't know if I can do that.  
9 That's somebody's life that you're playing with. I don't  
03:33 10 really know if I could honestly put him to death.

11 THE COURT: Notice that the question says that -- the  
12 assumption in the question is that you've decided that the  
13 death penalty is appropriate for him.

14 THE JUROR: I'm still very unsure.

15 THE COURT: I just wanted to call that to your  
16 attention.

17 Now, if you go to the next question, it's kind of a  
18 parallel question. If you found the defendant guilty and you  
19 decided that life imprisonment without the possibility of  
03:34 20 release was the appropriate punishment, could you  
21 conscientiously vote for that? You said "not sure" to that as  
22 well.

23 THE JUROR: Yeah. Honestly, on both of those, I do  
24 not know if I could --

25 THE COURT: When you say you don't know, you don't

1 know whether you would -- could do it in good conscience, or  
2 you don't know whether you could make up your mind about which  
3 was the better choice?

4 THE JUROR: Yes, which -- at the time. I'm not --

5 THE COURT: I explained this morning in brief terms  
6 the process. If there were a conviction of a capital crime,  
7 that we'd proceed to the penalty phase, and there would be  
8 evidence of what we call aggravating factors, and there would  
9 be evidence of mitigating factors, and they would have to be  
03:35 10 balanced. Could you make a judgment about which penalty was  
11 appropriate, if you were at that stage, based on an evaluation  
12 of that evidence?

13 THE JUROR: Would have to, yes.

14 MR. WEINREB: Thank you, your Honor. Good afternoon.

15 THE JUROR: Hi.

16 MR. WEINREB: My name is Bill Weinreb. I'm one of the  
17 prosecutors in the case.

18 I'm not sure I understood all of your answers at the  
19 end about the death penalty questions. So if you don't mind,  
03:35 20 I'd like to ask you a few more to clear it up.

21 THE JUROR: Sure.

22 MR. WEINREB: So if -- at the very end you said that  
23 -- in your answers to the final two questions that you --  
24 you're unsure about which way you would go. But I want to put  
25 aside this case entirely and just ask you in general about

1 serving on a jury where a defendant is potentially subject to  
2 the death sentence. So we're not talking about this defendant.  
3 And the question there is: If you -- can you envision cases  
4 where the circumstances could convince you that the death  
5 penalty was an appropriate sentence for an intentional murder?

6 THE JUROR: If there was such a case and the evidence  
7 shown proved beyond a reasonable doubt that he -- that the  
8 death penalty was the way to go, then, yes, I would vote for  
9 that particular way to go.

03:36 10 MR. WEINREB: Okay. What about the other? If the  
11 evidence showed --

12 THE JUROR: If it showed that life imprisonment was  
13 the way to go, then I would be voting for life imprisonment.

14 MR. WEINREB: Okay. Just to make sure that we're on  
15 the same page, you understand that the way that it works in the  
16 federal system is that, if a defendant is found guilty of an  
17 intentional murder, there's no automatic penalty one way or the  
18 other at that point. There's a whole second phase of the  
19 trial.

03:37 20 THE JUROR: I understand that.

21 MR. WEINREB: At that trial you'd hear evidence, and  
22 the government would try -- would offer evidence that it  
23 believes made the death sentence the appropriate sentence. The  
24 defense would offer evidence that it believes made life  
25 imprisonment the appropriate sentence. And there's no formula

1 for figuring out which is the right way to go. You, as a  
2 juror, are personally called upon to weigh all the evidence,  
3 consider it all together, and make a judgment at the end about  
4 what you believe is the right sentence.

5 THE COURT: You're doing a little bit about what  
6 you've criticized Mr. Bruck for doing.

7 MR. WEINREB: Here I'm not trying to lead to any  
8 particular answer. Generally just trying to ask --

9 THE COURT: Let's get to the question.

03:38 10 MR. WEINREB: -- whether you could do that.

11 THE JUROR: Yes, I could.

12 MR. WEINREB: If you determined that the death  
13 sentence was the appropriate sentence, could you actually do  
14 it, sentence someone to death, knowing that it was a decision  
15 you could never take back?

16 THE JUROR: Knowing that was the decision that I could  
17 never take back, again, that's somebody's life we're playing  
18 with. Even though he's been found guilty and the person has  
19 been sentenced to death, I -- that, I have -- you know, I'm  
03:38 20 unsure of because it's somebody's life.

21 MR. WEINREB: Okay. So you've never been in that  
22 situation before.

23 THE JUROR: No, I haven't.

24 MR. WEINREB: It's impossible to know from experience.  
25 So we're just -- we're left to ask you what your prediction is

1 of your ability.

2 MR. BRUCK: I think he's asked, and we have the  
3 answer.

4 THE COURT: He can have it. This is the last one. Go  
5 ahead. Answer the question.

6 THE JUROR: I would have to really weigh everything  
7 and really think about it before I would be able to make that  
8 decision. Again, it's somebody's life we're playing with  
9 regardless of the fact that they've been found guilty.

03:39 10 MR. WEINREB: Okay. And if you weighed it and made  
11 the decision and you came to the decision that a death sentence  
12 was the appropriate sentence, could you take the next step and  
13 actually give the sentence?

14 MS. CLARKE: I think that's been --

15 THE JUROR: I'm undecided on that. I'm sorry. I'm  
16 very undecided on that.

17 THE COURT: We'll leave it at that. That's the answer  
18 you're going to get, I think. Is that it?

19 MR. WEINREB: Yes. Thank you, your Honor. Thank you.

03:39 20 MS. CLARKE: My name is Judy Clarke. I'm one of the  
21 lawyers for Mr. Tsarnaev. Good afternoon.

22 THE JUROR: Good afternoon.

23 MS. CLARKE: If you'll bear with me just for a few  
24 questions.

25 THE JUROR: Sure.



1 MS. CLARKE: The jury is expected to do a couple of  
2 things in a capital case. After finding the accused guilty of  
3 the crime beyond a reasonable doubt, there's a penalty phase.  
4 And all the law requires of a juror is to fairly consider all  
5 of the evidence presented and to listen to it and deliberate  
6 about it. Can you do those things?

7 THE JUROR: Yes, I can.

8 MS. CLARKE: And recognizing in a capital case that no  
9 juror is ever required to vote for a death sentence but what a  
03:40 10 juror is required to do is give fair consideration to both  
11 options: life in prison without parole or death. Could you do  
12 that?

13 THE JUROR: I could, yes.

14 MS. CLARKE: And then the third thing that the juror  
15 has to do, be able to do, is to assure Judge that once that  
16 juror makes up his or her mind that they could follow through  
17 on their conscience. If their conscience said that a sentence  
18 of life in prison without parole was the right way to go,  
19 that's what they would vote for.

03:41 20 THE JUROR: Yes.

21 MS. CLARKE: You could do that?

22 THE JUROR: Yes.

23 MS. CLARKE: If their conscience said that the right  
24 way to go in that particular case was a death sentence, could  
25 you follow through on that third obligation as a juror?

1 THE JUROR: Again, I'm very unsure on that. I would  
2 have to weigh everything in my conscience and really take a  
3 look at my conscience and really think about that.

4 MS. CLARKE: Well, I think why we're spending just a  
5 little extra time allowing you to think fast about that  
6 because, obviously, since January the -- whatever day you came  
7 in, the 5th, I guess -- you've probably given it some  
8 consideration, right?

9 THE JUROR: I have, but, you know, again, my stance  
03:41 10 has been it's somebody's life, and I just don't know if I could  
11 make that conscious decision to put them to death. I honestly  
12 -- even though he's been found guilty and that's what they gave  
13 him, I honestly don't know if I could do that.

14 MS. CLARKE: Thank you.

15 THE JUROR: You're welcome.

16 THE COURT: All right. That's it. Thank you.

17 THE JUROR: Thank you very much.

18 THE CLERK: Juror No. 448.

19 THE JURY CLERK: Juror 448.

03:44 20 THE CLERK: Ma'am, over here, please. Have a seat.

21 THE COURT: Good afternoon.

22 THE JUROR: Good afternoon.

23 THE COURT: Have you been able to avoid talking about  
24 the case since we were last here?

25 THE JUROR: I have been. I didn't talk to anybody. I

1 mean, if it happened to be on television, I kind of walked out  
2 of the room.

3 THE COURT: Right. So we're going to follow up on  
4 some of the answers you gave in the questionnaire.

5 THE JUROR: Okay.

6 THE COURT: I want to start with, on Page 10, Question  
7 26, where we asked for your employment. You said you are an  
8 estate manager. Can you tell us what that is?

9 THE JUROR: Yes. This was for a private residence. I  
03:44 10 took care of this man and his wife for about 20 years. And  
11 when she passed away, she asked me to continue taking care of  
12 him, whatever he needed, and --

13 THE COURT: So you managed the household? Is that  
14 what you do?

15 THE JUROR: He had quite a lot of property. He had a  
16 big ranch in Colorado. He had a lot of stocks. I mean, I had  
17 a staff of, like, ten to twelve people. Whatever he needed,  
18 basically, that was -- but I was working at a hospital, at the  
19 Winchester Hospital.

03:45 20 THE COURT: Right, right.

21 THE JUROR: Then they asked me to leave that job to do  
22 this.

23 THE COURT: You've been putting it in the past tense.  
24 Are you still doing it?

25 THE JUROR: No. I retired in October.

1 THE COURT: All right. Okay. Congratulations.

2 THE JUROR: Thanks.

3 THE COURT: When you were doing it, were you -- he was  
4 based here, but he had properties elsewhere, is that it?

5 THE JUROR: He did.

6 THE COURT: So you would travel around?

7 THE JUROR: I did not have to travel, but if I had to  
8 I would have.

9 THE COURT: All right. So now you're a woman of  
03:46 10 leisure, is that it?

11 THE JUROR: I was. I was heading for Florida in  
12 January, but -- that's okay.

13 THE COURT: Well, you've got to enjoy all the snow.

14 THE JUROR: Oh, yeah, my first year out. I won't  
15 forget it.

16 THE COURT: Okay. I just want to turn to Question 77  
17 on Page 10 -- 10? 20, Page 20. In Question 77, we asked  
18 whether, based on things you'd seen or heard in the media or  
19 from other sources, you had formed an opinion about whether the  
03:46 20 defendant was guilty or not and what the penalty should be.  
21 You indicated by checking the boxes that you had an opinion  
22 formed that he was guilty but that you were unsure of the  
23 penalty, correct?

24 THE JUROR: Right.

25 THE COURT: In the second part of the question, if you

1 look at it, we asked, If you answered yes to any of those  
2 questions -- and you answered yes to Part (a) -- would you be  
3 able or unable to set aside your opinion and base your decision  
4 about guilt based solely on the evidence presented in court?  
5 And you checked "able."

6 THE JUROR: Yes.

7 THE COURT: Can you tell us about that?

8 THE JUROR: I believe that people have to -- you have  
9 to prove that he's innocent or guilty. Everybody has a fair  
03:47 10 chance. Nobody was born -- come into this world being bad. I  
11 just think everybody should have a fair chance.

12 THE COURT: Okay. As I'm sure you know, in a criminal  
13 prosecution, a person accused of a crime is presumed to be  
14 innocent of the crime unless the government proves that he's  
15 guilty by the evidence at trial and proves it to the jury  
16 beyond a reasonable doubt.

17 THE JUROR: Yes.

18 THE COURT: You're familiar with those concepts?

19 THE JUROR: Yes.

03:48 20 THE COURT: What we'd ask a juror to do in a criminal  
21 case is pay attention to the evidence in the case and make  
22 judgments about the various charges that may be made based on  
23 that evidence and not based on ideas that they might have from  
24 other sources.

25 THE JUROR: Yes.

1 THE COURT: If you were a juror in this case, would  
2 you be able to do that?

3 THE JUROR: Yes, I would.

4 THE COURT: And the burden of proof, of course, is  
5 always on the government to prove a person guilty. A defendant  
6 in a criminal case never has a burden to prove that he's not  
7 guilty. It's up to the government to prove its proposition in  
8 a sense.

9 THE JUROR: Uh-huh.

03:48 10 THE COURT: If, on any of the charges, you thought  
11 that the government had not fulfilled that -- had not carried  
12 that burden and had failed to convince you beyond a reasonable  
13 doubt that the defendant was guilty of that particular charge,  
14 would you be able to vote not guilty under those circumstances?

15 THE JUROR: Yes.

16 THE COURT: Let me just ask you to go to the next  
17 page.

18 THE JUROR: 21?

19 THE COURT: We asked about whether you had personally  
03:49 20 been affected -- that's Question 81 -- by the Marathon events.  
21 You said "no."

22 THE JUROR: No.

23 THE COURT: And in the next one -- there were various  
24 support activities after the events: the One Fund and Boston  
25 Strong and so on and so forth.

1 THE JUROR: Yes.

2 THE COURT: You said you purchased a shirt and a  
3 Boston Strong magnet. Can you just tell us --

4 THE JUROR: I'm a Red Sox ticket holder, so I go to  
5 many Red Sox games. I just happened to not go to that game  
6 that day. So I did go to one a few times later, and they were  
7 selling the shirts and --

8 THE COURT: What shirts were they?

9 THE JUROR: It says "Boston Strong" on them.

03:49 10 THE COURT: They weren't Red Sox shirts? That's what  
11 I was getting at.

12 THE JUROR: No. They were Boston Strong shirts, but I  
13 bought them at the Red Sox game and the little magnets that go  
14 in your car.

15 THE COURT: That was a short time after the events?

16 THE JUROR: I --

17 THE COURT: Later in April maybe?

18 THE JUROR: Well, I know that when I took the train in  
19 that the crime scene tape was still up, so we couldn't go near  
03:50 20 there. So it was in that time frame.

21 THE COURT: You know that the equipment truck has left  
22 for Florida?

23 THE JUROR: I know. I saw it yesterday. I wasn't on  
24 it.

25 THE COURT: On Page 23, beginning at Question 88, we

1 asked a series of questions about jurors' attitudes towards the  
2 death penalty. 88 itself was a -- asked, if you had any  
3 general views, what were they. And you said, "I believe the  
4 death penalty should be used depending on the crime, example,  
5 serial killer or rapist." Is that what that says?

6 THE JUROR: Yes.

7 THE COURT: "Anyone who would like to relive the  
8 crimes."

9 THE JUROR: Right.

03:51 10 THE COURT: "All of the crimes depends on the  
11 circumstances."

12 THE JUROR: Correct.

13 THE COURT: Okay. Do you want to amplify on that at  
14 all?

15 THE JUROR: Well, somebody like -- well, I put down a  
16 serial killer or a rapist. Somebody who would enjoy reliving  
17 that crime I think should then spend the rest of their life in  
18 jail -- should not, should get the death penalty so they would  
19 not enjoy reliving it. Somebody who, let's say, killed a  
03:51 20 police officer or somebody didn't plan it or -- I think life  
21 imprisonment. So it depends on the case.

22 THE COURT: Uh-huh. In the next question, we asked if  
23 you could think about putting a number on a scale to match your  
24 views. You chose No. 10, which, as the question says,  
25 "reflects the belief that the death penalty should be imposed



1 whenever the defendant has been convicted of intentional  
2 murder."

3 THE JUROR: Maybe I just didn't understand.

4 THE COURT: That seems a little more --

5 THE JUROR: Right. I'm not very good at taking tests.  
6 This was like a test.

7 THE COURT: Let's go to the next question, which,  
8 rather than using numbers, puts it in words.

9 THE JUROR: Okay.

03:52 10 THE COURT: There was a series of propositions. We  
11 asked if you could find one that reflected your feelings about  
12 the death penalty when somebody has been convicted of murder.  
13 You actually selected two.

14 THE JUROR: Okay.

15 THE COURT: (d) and (e). Is that because you  
16 weren't --

17 THE JUROR: Let me see what it says.

18 THE COURT: Go ahead. Read it.

19 THE JUROR: (d) is the -- actually the answer to the  
03:53 20 previous question, the other page when I said depending on the  
21 type of crime it was.

22 THE COURT: Okay.

23 THE JUROR: Let me see. (e), again, same thing.

24 THE COURT: Okay. So now correct me if I'm wrong. I  
25 don't want to put words in your mouth.

1 THE JUROR: Okay.

2 THE COURT: Is it your position then, based on those  
3 answers, that you would make up your mind, if you were in the  
4 penalty phase of a case, which -- whether the death penalty or  
5 life imprisonment without possibility of release was the right  
6 punishment, would you make your mind up after you had  
7 considered all the --

8 THE JUROR: Yes.

9 THE COURT: -- penalty phase information that you had  
03:53 10 gotten in the course of that?

11 THE JUROR: Yes, I would.

12 THE COURT: Without any necessary predisposition to  
13 one view or the other?

14 THE JUROR: No.

15 THE COURT: Let me ask you to go to the next page,  
16 bottom of the page, Question 95. We put it in the context of  
17 this case. If you found the defendant guilty and you decided  
18 that the death penalty was the appropriate punishment for him,  
19 could you conscientiously vote for the death penalty? And you  
03:54 20 said "yes."

21 THE JUROR: Yes.

22 THE COURT: Then if you go to the top of the next, we  
23 asked a similar question. If you found him guilty and you  
24 decided life in prison without the possibility of release was  
25 the appropriate punishment for him, could you conscientiously

1 vote for that sentence? And you said "yes."

2 THE JUROR: Yes.

3 THE COURT: So, okay. I'll just leave it at that.

4 THE JUROR: Whatever the jury decided would be a --

5 THE COURT: You understand you don't have to do what  
6 the other jurors do?

7 THE JUROR: I understand, yes. But I would put my  
8 feelings forth.

9 THE COURT: You would be open to either?

03:54 10 THE JUROR: Either/or.

11 MR. WEINREB: I have nothing, your Honor. Thank you.

12 MS. CONRAD: Good afternoon, ma'am. My name is Miriam  
13 Conrad. I'm one of Mr. Tsarnaev's lawyers.

14 How long have you been a Red Sox season ticket holder?

15 THE JUROR: About 15 years.

16 MS. CONRAD: So the game that you went to after the  
17 Marathon bombing, was there a ceremony or any events honoring  
18 the Marathon bombing victims?

19 THE JUROR: I was not at that game. You mean when  
03:55 20 they brought in the victims?

21 MS. CONRAD: Well, was there any acknowledgment --

22 THE JUROR: I don't remember.

23 MS. CONRAD: Was it the game where David Ortiz made  
24 his famous statement that I can't repeat?

25 THE JUROR: No. Wait a minute. Maybe. It could have

1       been. You know, if I'm not at the game, I'm watching it on TV.

2               MS. CONRAD: Sure.

3               THE JUROR: So I could say yes and then I could be  
4       wrong so --

5               MS. CONRAD: But there was a lot of emotion.

6               THE JUROR: Oh, yes, there was.

7               MS. CONRAD: And how did that affect you?

8               THE JUROR: I cried.

9               MS. CONRAD: On the anniversary, I think it was -- I  
03:56 10       don't remember if it was Opening Day of 2014 when the --

11              MR. WEINREB: Objection, your Honor.

12              MS. CONRAD: I'm getting to the question.

13              MR. WEINREB: A question would be more appropriate  
14       than --

15              MS. CONRAD: Were you present when the World Series  
16       rings were presented --

17              THE JUROR: No.

18              MS. CONRAD: -- by Marathon bombing victims?

19              THE JUROR: No.

03:56 20             MS. CONRAD: Did you watch that on TV?

21              THE JUROR: I could have, but I could have also been  
22       in Florida. I don't remember.

23              MS. CONRAD: Okay. Let me just ask generally. On how  
24       many occasions that you either watched a Red Sox game or  
25       attended a Red Sox game was there some acknowledgement of the

1 Marathon bombing events?

2 THE JUROR: Well, last year I only went to four, and I  
3 get 13. So I'd say maybe -- out of the four, maybe one or two.

4 MS. CONRAD: Do you remember anything about what those  
5 events were?

6 MR. WEINREB: Objection.

7 THE COURT: Yeah. I think -- I don't think we --

8 MS. CONRAD: Well, let me ask this question: You said  
9 that you didn't go to the game on April 15, 2013, the Patriots'  
03:57 10 Day game.

11 THE JUROR: No, I did not.

12 MS. CONRAD: Did you know anybody who did?

13 THE JUROR: Probably the other owners of those  
14 tickets.

15 MS. CONRAD: Did you speak with them about what their  
16 experience was like that day?

17 THE JUROR: No, I did not because I don't see these  
18 people again till the following year at draft.

19 MS. CONRAD: Did you have any concerns about their  
03:57 20 safety that day?

21 THE JUROR: I did not.

22 MS. CONRAD: Do you remember where you were that day?

23 THE JUROR: Actually, I was taking care of my boss at  
24 the time.

25 MS. CONRAD: I'm sorry?

1 THE JUROR: I was taking care of my boss at the time.

2 MS. CONRAD: Do you remember how you found out about  
3 the bombing?

4 THE JUROR: On television.

5 MS. CONRAD: What do you remember about that?

6 THE JUROR: Just that there had been an explosion at  
7 the finish line, and then it was just constant TV about it.

8 MS. CONRAD: How did you feel?

9 THE JUROR: It's hard to say. You feel numb. You  
03:58 10 don't know -- believe it or not, the one feeling I did have was  
11 I felt guilty.

12 MS. CONRAD: Why?

13 THE JUROR: I wasn't there.

14 MS. CONRAD: Can you tell me more about that?

15 MR. WEINREB: Objection, your Honor. This isn't  
16 follow-up on any --

17 THE COURT: Yeah. Let's stick with the main event  
18 here.

19 MS. CONRAD: Well, I think, respectfully, your Honor,  
03:58 20 this is.

21 THE COURT: No.

22 MS. CONRAD: Were you affected by the shelter in place  
23 on April 19th?

24 THE JUROR: Was I affected by what?

25 MS. CONRAD: The shelter in place on April 19th.

1 THE JUROR: No, I was not.

2 MS. CONRAD: Now, you selected on your questionnaire,  
3 on Page 23, Question 89, No. 10 -- if you'd just take a moment  
4 to read the introduction.

5 THE JUROR: Page 23?

6 THE COURT: Yes, 23, Question 89.

7 MS. CONRAD: Where all the numbers are.

8 THE JUROR: Oh, yes.

9 MS. CONRAD: If you take a look at the introduction to  
03:59 10 that, it says that 10 reflects a belief that the death penalty  
11 should be imposed whenever the defendant has been convicted of  
12 intentional murder. So is that how you feel?

13 THE JUROR: No. It shouldn't be in every murder case.

14 MS. CONRAD: Okay. But you selected 10.

15 THE JUROR: I know, because I'm not very good, like I  
16 said -- maybe I read through to it too fast.

17 MS. CONRAD: Sure. You said something -- when the  
18 judge was asking you questions about your opinions about when  
19 the death penalty would be appropriate, you said something  
04:00 20 about if a police officer is killed.

21 THE JUROR: Right. That wasn't a premeditated. That  
22 was something that happened in the -- the person that commits  
23 the crime is not going to sit back in his cell thinking, oh --  
24 reliving it, how wonderful it was.

25 MS. CONRAD: But what if it were premeditated?

1 MR. WEINREB: Objection. That's a precommitment  
2 question.

3 THE COURT: Yes. The examples are sort of  
4 spontaneous. I don't think you can place too much weight on  
5 them.

6 MS. CONRAD: My question is -- let me ask a different  
7 question. Do you believe that anyone who commits a  
8 premeditated murder of a police officer should receive the  
9 death penalty?

04:00 10 MR. WEINREB: Objection.

11 THE COURT: Well, again, I think -- you know, we've  
12 had this discussion. They're often using terms that have legal  
13 freight in ways that they may not be clear. It will produce  
14 ambiguity that is --

15 MS. CONRAD: May I then --

16 MR. WEINREB: Your Honor, I have an additional ground  
17 as well, which is, offering one aggravating circumstance  
18 without any of the mitigating circumstances is a case-specific  
19 *Morgan*-type question that we've decided long ago is not  
04:01 20 appropriate.

21 THE COURT: I agree with that.

22 MS. CONRAD: Can I ask, ma'am, what you mean by  
23 premeditated?

24 MR. WEINREB: Objection.

25 THE COURT: No.



1 MS. CONRAD: Do you -- if someone were charged --  
2 strike that.

3 If someone were found guilty beyond a reasonable doubt  
4 of a preplanned murder, would you be willing or able to take  
5 into account facts about the defendant before -- such as his  
6 background, before deciding whether the death penalty was  
7 appropriate?

8 THE JUROR: No.

9 MS. CONRAD: Thank you.

04:02 10 THE COURT: Is that it?

11 Okay, ma'am. Thank you. You may step out.

12 THE JUROR: Thank you.

13 THE COURT: I think we have time for one more.

14 THE CLERK: Juror No. 452.

15 THE JURY CLERK: Juror No. 452.

16 THE CLERK: Sir, over here, please. Have a seat.

17 THE COURT: Good afternoon.

18 THE JUROR: Good afternoon. Hi, Judge.

19 THE COURT: Have you been able to avoid discussing the  
04:03 20 merits of the case with anyone?

21 THE JUROR: Absolutely.

22 THE COURT: And, as much as possible, avoid media  
23 coverage of the case?

24 THE JUROR: Yes. I don't follow it, you know.

25 THE COURT: That'S the questionnaire that you filled

1 out. We're going to follow up on some of the answers you gave  
2 to get some more information.

3 I'm interested -- this is on Page 4, the beginning.  
4 You spent a total of four years in Africa?

5 THE JUROR: Yes, I have.

6 THE COURT: Can you tell us about that?

7 THE JUROR: Well, my parents were divorced. My mother  
8 was a librarian. I was a youth. I was, like, eight and nine  
9 and then 12 and 13 so two different periods of times for two  
04:04 10 years in two different places.

11 THE COURT: Currently, you're a staff nurse at the  
12 McLean Hospital.

13 THE JUROR: That's right.

14 THE COURT: You've been doing that for quite awhile?

15 THE JUROR: Thirty-eight years in March.

16 THE COURT: Looking at Page 11, we asked about some  
17 affiliations of you or other family members. You said your  
18 father was a criminal defense lawyer for about 30 years.

19 THE JUROR: That's right.

04:05 20 THE COURT: Where did he practice?

21 THE JUROR: In Florida, in Key West, in Miami,  
22 Florida, and -- in the south, in Florida primarily.

23 THE COURT: Okay. Now, I think you said your parents  
24 were divorced. Were you living with him when he was --

25 THE JUROR: No. I was living with my mother. I'd

1 visit him. I'd go down for spring breaks or whatever in  
2 college and so on, yeah.

3 THE COURT: Your father-in-law was also a -- no. He  
4 was just private practice, not necessarily criminal defense  
5 practice, is that it?

6 THE JUROR: Not criminal at all.

7 THE COURT: So let me ask you to turn to Page 20. And  
8 if it's more convenient, you can take the clip off the page.

9 THE JUROR: Okay.

04:06 10 THE COURT: Question 77, in that question we asked  
11 whether, based on things you'd seen or read in the media or  
12 from other sources, you had formed various opinions. And you  
13 indicated that, yes, you had formed an opinion the defendant  
14 was guilty. And as to the penalty questions, in Part (c) and  
15 (d), you said you were unsure.

16 THE JUROR: Right.

17 THE COURT: Then down just below that, we said, If you  
18 answered yes to any of the questions, would you be able or  
19 unable to set aside your opinion and base your decision about  
04:06 20 guilt solely on the evidence presented to you in court? And  
21 you checked "able."

22 THE JUROR: Yes.

23 THE COURT: Would you tell us about that?

24 THE JUROR: As to the guilty or the penalty phase or  
25 which? Just the guilty?

1 THE COURT: Let's concentrate on the "yes" to guilty  
2 and "able" to set aside.

3 THE JUROR: Okay. So, in general, I have an opinion  
4 that the -- Mr. Tsarnaev is guilty. However, I don't know the  
5 charges. I don't know the evidence. I don't know anything  
6 about it aside from, you know, what was, like, visibly  
7 displayed everywhere. I would have to be --

8 THE COURT: I'm sure you know that in our criminal  
9 justice system a person is presumed innocent of any charge  
04:07 10 against him unless and until the government proves that he's  
11 guilty by evidence at the trial and that the government's proof  
12 must be convincing enough that the jurors have no reasonable  
13 doubt about the fact of the person's guilt. You're familiar  
14 with those principles?

15 THE JUROR: I am.

16 THE COURT: What we ask jurors to do is just set aside  
17 ideas they might have from other sources about the issues in  
18 the case and decide those issues based only on what they hear  
19 in the course of the trial. You think you would be able to do  
04:07 20 that?

21 THE JUROR: Yeah. I mean, I -- I would go into that,  
22 you know, believing that and so I -- that is a fundamental  
23 right and so on. I agree with that principle.

24 THE COURT: If, on any of the particular charges, you  
25 thought that the government's proof had not convinced you

1 beyond a reasonable doubt that the defendant was guilty, would  
2 you be able to vote for not guilty?

3 THE JUROR: Absolutely. I mean, sure.

4 THE COURT: In your work, do you have any intersection  
5 with the criminal justice system?

6 THE JUROR: Not really. I mean, someone may call 911  
7 and say, I'm being held here against my will, and the Belmont  
8 Police will show up at their door. That is the extent of it.  
9 Or we might have a forensic consult on a patient, that kind of  
04:08 10 thing. In general, no. It's not Bridgewater. It's McLean.

11 THE COURT: Beginning on Page 23, at Question 88, we  
12 asked a series of questions about jurors' attitudes regarding  
13 the death penalty. 88 was a question about views in general,  
14 if you had any views about the death penalty in general. And  
15 you said, "Generally opposed, possible exceptions."

16 THE JUROR: Right.

17 THE COURT: Can you explain that a little?

18 THE JUROR: Sure. I'm generally opposed. You know,  
19 probably 30 years ago I would have been for. But then, you  
04:09 20 know, the DNA evidence and the questions that have come up  
21 about it, I've become more generally opposed. Possible  
22 exceptions would be, you know, war crimes, the Nuremberg Trial  
23 or terrorism, I think, and serial killers. There are some  
24 things that probably I would lean more towards being in favor  
25 of it.

1           THE COURT: So in 89 we asked you to place yourself on  
2 a scale of 1 to 10, where 1 is strongly opposed and would never  
3 vote to impose; 10 being the opposite of that, strongly in  
4 favor and virtually always would vote to. You placed yourself  
5 as No. 2. Anything you want to say about that?

6           THE JUROR: Well, I just probably, you know,  
7 statistically thinking that the vast majority of crimes don't  
8 fall into those exceptions of mine; and so, therefore, I would  
9 be more towards the strongly opposed than not.

04:10 10           THE COURT: On the next page, in Question 90, we asked  
11 it not with numbers but with words and asked if you found a  
12 statement among the several you had to choose from that  
13 expressed your view the best. You chose (c). "I'm opposed to  
14 the death penalty, but I could vote to impose it if I believed  
15 that the facts and the law in the particular case called for  
16 it." Is that a --

17           THE JUROR: Right. I think that's accurate. I  
18 haven't had time to look over these others.

19           THE COURT: Take your time.

04:10 20           THE JUROR: Okay, sure, absolutely.

21           Okay. So (c) or (d). I'd have to look and break  
22 those down. "I'm not for or against the death penalty." "I'm  
23 more against it." "I could vote to impose it or I could vote  
24 to impose a sentence" -- either (c) or (d). They seem to be  
25 pretty close.

1 THE COURT: Well, one of the differences between (c)  
2 and (d) is (c) begins by saying you're opposed to the death  
3 penalty. The other says you're neither for or against.

4 THE JUROR: Right. Then I am not for or against,  
5 although, as I've said, you know, in 90 percent or more, I'm  
6 more against but I'm not -- to me, being against something  
7 means more like (a) so --

8 THE COURT: You read for or against "always," one way  
9 or the other; is that what you're saying?

04:12 10 THE JUROR: Right.

11 THE COURT: Because you're not an always, in your  
12 view, in either direction, you're somewhere in the middle?

13 THE JUROR: Yeah, exactly, more towards --

14 THE COURT: Let's look at the bottom of Page 25,  
15 Question 95. And that question puts it in the context of this  
16 case. If you found Mr. Tsarnaev guilty and you decided that  
17 the death penalty was the appropriate punishment for him, could  
18 you conscientiously vote for the death penalty? And you  
19 checked "yes."

04:12 20 THE JUROR: Yeah. So it's presumed that I found him  
21 guilty and decided that it was the appropriate punishment. If  
22 I did that, I would not for some other reason say no, you know,  
23 so, I mean, if I reached those conclusions.

24 THE COURT: Right. And then at the top of the next  
25 page, 96, we asked the parallel question. If you found him

1 guilty and decided that life imprisonment without the  
2 possibility of release was the appropriate punishment, could  
3 you conscientiously vote for life imprisonment without the  
4 possibility of release? And you checked "yes" there.

5 THE JUROR: Right. So, yeah, I think it's kind of the  
6 same thing in a way. It doesn't really have the death penalty  
7 involved in this question, so I would be --

8 THE COURT: This is the alternate.

9 THE JUROR: Yeah. If I thought that it was life  
04:13 10 imprisonment and that was the appropriate, then I would  
11 absolutely certify that if that's what I thought.

12 THE COURT: Okay. All right. Follow-up?

13 MR. WEINREB: Thank you, your Honor. Good afternoon.

14 THE JUROR: Hi.

15 MR. WEINREB: My name is Bill Weinreb. I'm one of the  
16 prosecutors in the case.

17 THE JUROR: Okay.

18 MR. WEINREB: I just want to follow up on one thing,  
19 which is the nature of your work at McLean.

04:13 20 THE JUROR: Sure.

21 MR. WEINREB: What kind of care do you provide to the  
22 patients?

23 THE JUROR: The very best.

24 (Laughter.)

25 MR. WEINREB: That's really all I needed to know.



1 THE JUROR: So it's a 28-bed psychotic disorders unit.  
2 Schizophrenia and bipolar are the main diagnoses. So it's  
3 fairly short term. When I started at McLean, the average stay  
4 was 381 days. Now it's down to about 12. So it's just direct  
5 clinical care of the patient. I'm a member of the rounds  
6 teams. I administer medications. I speak with the patients  
7 individually and so on.

8 MR. WEINREB: Do you -- I assume you don't do  
9 diagnostic tests?

04:14 10 THE JUROR: I don't, no. I'm a nurse.

11 MR. WEINREB: Do you do therapy with them though of  
12 any kind?

13 THE JUROR: No, just what we call staff talks, just  
14 sort of checking in with the person, just trying to reassure  
15 them or help them along in the process.

16 MR. WEINREB: Are you part of discussions with the  
17 doctors and the staff about what the problems are?

18 THE JUROR: Absolutely. It's a very democratic place.  
19 I don't know if you know anything about McLean. That's one of  
04:14 20 the best things I've felt about it in all my time there. So,  
21 absolutely. Nurses and mental health workers and everybody has  
22 a lot of input into what's going on. I may know something that  
23 the doctor hasn't come across and/or -- you know, I'm not going  
24 to say, I think this person is bipolar. I'm not going to go  
25 over those boundaries, but I'm going to give information and

1 communicate, you know, what I've observed and assessed.

2 MR. WEINREB: Okay. Thanks very much.

3 THE COURT: Sure, absolutely.

4 MS. CONRAD: Good afternoon, sir. My name is Miriam  
5 Conrad. I'm one of Mr. Tsarnaev's lawyers.

6 THE JUROR: Hi.

7 MS. CONRAD: You mentioned that there were certain  
8 exceptions where you thought the death penalty was appropriate,  
9 and you mentioned a few of those. In those exceptions, would  
04:15 10 you automatically vote for the death penalty?

11 MR. WEINREB: Objection. That's not --

12 THE COURT: No. Go ahead. You can answer that.

13 THE JUROR: I don't -- no. I don't have a checklist  
14 necessarily. You know what I mean? I think each case is  
15 individual. So I wouldn't say, Okay, you know, Goring should  
16 be killed but Hitler should be left off. I don't know. I  
17 don't have a hard-and-fast rule about --

18 MS. CONRAD: You would be able to listen to the  
19 evidence during the penalty phase and consider both facts about  
04:16 20 the crime and facts about the defendant himself before deciding  
21 what the appropriate punishment is?

22 THE JUROR: Oh, absolutely.

23 MS. CONRAD: Thank you.

24 THE COURT: Okay, sir. Thank you very much.

25 THE JUROR: Thank you.

1 THE COURT: We'll take a lunch break. 2:00.

2 (Luncheon recess taken at 1:03 p.m.)

3 (The Court enters the courtroom at 2:08 p.m.)

4 THE COURT: Okay. Ready?

5 THE CLERK: Juror No. 453.

6 THE JURY CLERK: Juror No. 453.

7 (The juror enters the courtroom.)

8 THE CLERK: Sir, over here, if you would. Take a  
9 seat.

05:21 10 Keep your voice up and speak into the mic, okay?

11 THE JUROR: Okay.

12 THE COURT: Good afternoon.

13 THE JUROR: Good afternoon.

14 THE COURT: Have you been able to avoid discussion of  
15 the merits of the case since we were last here?

16 THE JUROR: Yes.

17 THE COURT: And also as much as possible avoid media  
18 accounts?

19 THE JUROR: I haven't talked to anyone.

05:21 20 THE COURT: But I'm talking about the media too.

21 THE JUROR: Yeah, the media too. Definitely not the  
22 media.

23 THE COURT: Thank you.

24 So I'm going to follow up on some of the answers you  
25 gave to some of the questions.

1 THE JUROR: Okay.

2 THE COURT: You're currently an assistant professor in  
3 political science?

4 THE JUROR: Yup.

5 THE COURT: Any special concentration?

6 THE JUROR: Political science. Oh, I'm sorry.  
7 Comparative politics. I do immigration politics, Latin  
8 America, development, international relations. Is that what  
9 you meant?

05:22 10 THE COURT: Yeah.

11 THE JUROR: Yeah.

12 THE COURT: Yeah. Both undergraduate and graduate?

13 THE JUROR: Well, UMass -- oh, I'm not supposed to  
14 say.

15 THE COURT: You can. That's all right.

16 THE JUROR: Well, the school I teach at there's mostly  
17 undergrads. So I have taught some graduate courses but -- in  
18 development, but most of the time I teach undergrads.

19 THE COURT: Okay. You're working on a book?

05:22 20 THE JUROR: I just finished it, actually.

21 THE COURT: Oh, you did. What is the topic? Just  
22 generally.

23 THE JUROR: Remittances. Remittances. Money that  
24 migrants send back to their home countries.

25 THE COURT: Okay. You write on a blog at the

1 University of Pittsburgh?

2 THE JUROR: Yeah. It's, you know, sort of a political  
3 scientist talking about current events. It's all about Latin  
4 America, though. Nothing about the U.S. Well, that's not  
5 true. I have written about U.S.-related issues with the war on  
6 drugs and that sort of thing, but nothing domestic.

7 THE COURT: And in terms of Facebook and Twitter, you  
8 use them --

9 THE JUROR: I do use Facebook very often, yes.

05:23 10 THE COURT: For --

11 THE JUROR: Twit- --

12 THE COURT: -- personal matters?

13 THE JUROR: Personal matters, yes. I don't have any  
14 page -- I do express political opinions from time to time, but  
15 it's personal. And Twitter, I actually just joined recently,  
16 but I haven't -- I tweeted one thing, so that's it.

17 THE COURT: Okay. I see -- this is on page 11 at  
18 Question 31 -- that you had a cousin who was killed in Iraq in  
19 2006?

05:24 20 THE JUROR: Yes.

21 THE COURT: Can you tell us about that?

22 THE JUROR: Yeah. My cousin, he was a medic. We were  
23 fairly close, actually. Sorry. And he -- he joined Iraq  
24 and -- actually, I feel very strongly about it because I didn't  
25 agree with the war in the first place. I thought that it was a

1 mistake that he joined the Army. He did it because he wanted  
2 to go to college and couldn't pay for it. And he thought,  
3 "I'll join the military." The kid -- yeah. Wasted life, you  
4 know.

5 Anyway, yeah. Sorry.

6 THE COURT: Yeah, I understand. So similar to you in  
7 age? Were you growing up together or --

8 THE JUROR: Oh, in age? He was a little younger than  
9 me, about three years younger than me.

05:24 10 THE COURT: Yeah.

11 THE JUROR: Also an immigrant who had come here soon  
12 after -- yeah, soon after. Soon after I came.

13 THE COURT: Yeah.

14 THE JUROR: Yeah.

15 THE COURT: Did you grow up in the same area?

16 THE JUROR: No, no. Well, I mean, up until -- I came  
17 here when I was 12, and before that we grew up together in the  
18 same city. Then I came to Arizona and he went to California,  
19 and we saw each other a few times. And, yeah, it -- we were  
05:25 20 planning to go to a game before he went in the -- yeah.

21 THE COURT: Yeah, I can see it affects you.

22 THE JUROR: Yeah.

23 THE COURT: Do you know the circumstances of --

24 THE JUROR: He was in a Humvee in Iraq. They were  
25 driving. I don't know where they were going or what they were

1 doing. But he was in a Humvee and there was an -- what do you  
2 call it, an explosive on the side of the road. Some, you  
3 know -- I don't know, the rebels or whatever put something on  
4 the side and then -- yeah. Okay.

5 THE JUROR: Yeah. Yeah.

6 THE COURT: We asked various questions about  
7 organizations or causes that you might have been affiliated  
8 with or supported. On Question 39 on page 13 --

9 THE JUROR: Yeah.

05:26 10 THE COURT: -- you noted two, I guess.

11 One was immigration law reform as you've already  
12 adverted to, and also death penalty laws reform. Can you tell  
13 us a little bit about that?

14 THE JUROR: Yeah. So both? In the case of --

15 THE COURT: Yeah, okay. Both. Sure. I was more  
16 interested in the death penalty --

17 THE JUROR: Yeah, obviously, I would think.

18 Immigration law, I just went on a rally in D.C. about  
19 support for comprehensive immigration reform. Death penalty  
05:26 20 law reform I was at a meeting where people were talking about  
21 reforming the death penalty. My wife works for a foundation  
22 that supports abolishing the death penalty, and so those were  
23 the people that I --

24 THE COURT: Do you know the name of the foundation?

25 THE JUROR: Proteus, P-R-O-T-E-U-S.

1 THE COURT: Okay. In Question 72, this is now on page  
2 19, we asked if you'd called a talk show, written a letter to  
3 an editor, posted a comment and so on about issues, and you  
4 said, "Yes. Immigration, Latin American politics and U.S.  
5 invasion of Iraq."

6 THE JUROR: Expanding: Invasion of Iraq, I was asked  
7 to talk about it with a Hawaiian on TV. They were asking me  
8 about veterans -- what was happening was we were leaving Iraq,  
9 or Obama said that the war was over, we're bringing troops  
05:28 10 back, and they asked me to comment on it, so I did.

11 THE COURT: Who asked?

12 THE JUROR: It was a Hawaiian talk show. So, you  
13 know, like a politics sort of general show. And, yeah. That's  
14 what you --

15 THE COURT: When was that?

16 THE JUROR: When did Obama -- whenever that was.  
17 2010, 20- -- yeah, 2010.

18 THE COURT: On page 20 --

19 THE JUROR: Yeah.

05:28 20 THE COURT: -- if you'd look at Question 77.

21 THE JUROR: Yup.

22 THE COURT: In this question we've asked whether,  
23 based on things you'd seen or heard, you'd formed an opinion  
24 that the defendant was guilty and if you had an opinion about  
25 the penalty that should be imposed and so on.



1 THE JUROR: Yeah.

2 THE COURT: You answered yes, you had an opinion that  
3 he was guilty, and as to the penalty you were unsure.

4 THE JUROR: Yeah.

5 THE COURT: Then we asked below that, "If you answered  
6 yes to any of these questions, would you be able or unable to  
7 set aside your opinion and base your decision about guilt  
8 solely on the evidence that will be presented to you in court,"  
9 and you said, "I do not know."

05:29 10 Can you tell us about that?

11 THE JUROR: Well, I don't think -- I feel pretty  
12 strongly about the death penalty, but in the case -- in this  
13 particular case.

14 THE COURT: Before we get to the death penalty, I want  
15 to focus on Part A where you said you had an opinion that he  
16 was guilty.

17 THE JUROR: So prior to this case -- I'm not  
18 originally from Boston. I didn't know anything about really  
19 the Boston Marathon. And so when it happened, it was pretty  
05:29 20 shocking, the whole thing. So I read extensively about it. I  
21 mean, I teach politics, so of course I was interested in the  
22 particular case. I read about lots of articles on *Slate*. I  
23 read them on *Boston Globe* and a bunch of other places.

24 And so at least from what I read, it seemed pretty  
25 clear that he was guilty, guilty in the sense that he had been

1 part of this and he had committed -- you know, that he had been  
2 part of the killing of the MIT officer, that he had been  
3 setting the bombs in the Boston Marathon. Yeah, so to me that  
4 seems pretty clear that he's guilty.

5 And then what do you want me to say, or what did you  
6 want me to answer? So should he receive the death penalty?

7 THE COURT: No. No, not yet.

8 THE JUROR: Sorry, sorry, sorry.

9 THE COURT: In our criminal justice system a person  
05:30 10 who is accused of a crime is presumed to be innocent, or not  
11 guilty --

12 THE JUROR: Right.

13 THE COURT: -- unless the government proves that he's  
14 guilty by the evidence at trial. And we ask trial jurors to  
15 evaluate the evidence and tell us whether the government has  
16 proved that or not.

17 THE JUROR: Right.

18 THE COURT: And if they're satisfied beyond a  
19 reasonable doubt that the government has proved the fact of  
05:30 20 guilt, then they may return a verdict of guilty, but if they're  
21 not convinced of that, it's the obligation of the jury to find  
22 the person not guilty.

23 THE JUROR: Right.

24 THE COURT: It's understandable that people have  
25 impressions about what happened in this case and that they

1 would approach the jury service having that in some degree.  
2 And the question -- the second part of the question asked would  
3 you be -- to the extent you had such opinions, would you be  
4 able to set them aside and to concentrate on the trial evidence  
5 and make a judgment based on that body of evidence alone  
6 regardless of what other impressions you had from those reports  
7 or otherwise?

8 THE JUROR: Right.

9 THE COURT: So that's really the self-assessment  
05:31 10 question. Do you think you would be able to do that?

11 THE JUROR: I think it would be very difficult to. I  
12 can't say for sure that I wouldn't, but I think it would be  
13 very, very difficult for me to get rid of impressions I have.

14 THE COURT: Okay. Let's now turn for a minute to the  
15 death penalty questions.

16 THE JUROR: Okay.

17 THE COURT: And that's on 23.

18 THE JUROR: Yeah.

19 THE COURT: Beginning at Question 88.

05:32 20 THE JUROR: Yup.

21 THE COURT: 88 is a question whether you had views  
22 about the death penalty in general, what are they. And you  
23 wrote, "I believe the death penalty should be abolished. As  
24 much as I believe Tsarnaev is guilty, I do not think he should  
25 be executed."

1 THE JUROR: That's correct.

2 THE COURT: Okay. Do you want to amplify on that at  
3 all or...

4 THE JUROR: So I believe very strongly -- or fairly  
5 strongly -- that the death penalty should not be -- should not  
6 exist here or anywhere. Although I think -- and the reason why  
7 I think that's the case is because it's very difficult, I  
8 think, to have an impartial reading of cases. In this  
9 particular case it might be clear, say. There are  
05:32 10 cases -- there are many cases that have been -- death penalty  
11 has been imparted. In Texas, for instance, in Florida, in  
12 Alabama, which I think the -- okay. My impression is that it  
13 was wrong, and people have written about this. And so because  
14 I think there's always a possibility that it could be wrong, I  
15 think that the death penalty should be abolished because  
16 there's always a possibility that people are innocent and that  
17 they get killed. So that's what I think generally about the  
18 death penalty.

19 In Mexico, which is where I was from, does not have  
05:33 20 the death penalty, and so maybe that's where I get this from.  
21 But -- so, yeah. So I think generally as it is, it should be  
22 abolished, and if I had the power to do that, I would do it  
23 today.

24 Nonetheless, even though I believe that the death  
25 penalty should be abolished, there are cases I think, for

1 instance, in the case of the Aurora shooter or the Newtown  
2 situation, where the crimes are so horrendous that I can  
3 understand why the death penalty exists, let's say, people feel  
4 whatever.

5 And so I don't think personally I would be able to  
6 execute -- or to decide for the execution of anyone. And even  
7 though I think -- my impression is that Tsarnaev is guilty, I  
8 don't think that I would be able to say that he should be  
9 executed.

05:34 10 THE COURT: Okay. And I just want to, I guess -- you  
11 indicated that generally by the next question --

12 THE JUROR: The 2?

13 THE COURT: -- the 2, and then again on the next page,  
14 Question 90, where you chose as close to your views Statement  
15 B, which is you're opposed to the death penalty, would have a  
16 difficult time voting to impose it?

17 THE JUROR: Yeah. So the reason I put a 2, for  
18 instance, is because I can imagine a possibility where, I  
19 suppose -- like Hitler, for instance, or somebody like that --  
05:35 20 where they commit genocide or something so horrendous that I  
21 suppose I could have -- I would vote in that instance. But in  
22 this case I don't think -- I don't think the -- at least -- and  
23 I don't know in the previous question -- I don't foresee myself  
24 as being able to do that, but I suppose there's a possibility  
25 that I could be okay. I don't know.

1 But I think even if the facts -- even if the facts  
2 were clear -- as I said before, even if he was guilty, it would  
3 be very difficult for me to say we should execute him.

4 THE COURT: Okay. Finally, for me, anyway -- and the  
5 lawyers will have a chance to ask you things if they want -- on  
6 page 26.

7 THE JUROR: Yeah.

8 THE COURT: The Question 97.

9 THE JUROR: Yeah.

05:35 10 THE COURT: You say, "I teach international relations,  
11 so I'm familiar with Tsarnaev's claims about Russian and  
12 American terrorism."

13 THE JUROR: Yeah.

14 THE COURT: What are those claims?

15 THE JUROR: Well, claims about Putin in particular;  
16 about the oppression from the Russian state on Chechnya and on  
17 the neighboring states; claims about abuses and people getting  
18 killed; police brutality, et cetera. And I'm also familiar  
19 with -- or claims about the United States being unfair to  
05:36 20 Muslims, about the invasion of Iraq and all of these things  
21 related to the Muslim world. I don't necessarily agree, but I  
22 am familiar.

23 THE COURT: I understand.

24 You put it in terms of "the defendant's claims." How  
25 do you know what the defendant's claims are?

1 THE JUROR: Well, from the reading -- from what I  
2 was -- from what I had read prior to the -- my impressions,  
3 anyway, of --

4 THE COURT: From the sources you were talking about?

5 THE JUROR: Yes, from *Slate*, from the *Boston Globe*,  
6 from magazines, et cetera, yeah.

7 THE COURT: Okay. Questions?

8 MR. CHAKRAVARTY: Yes. Good afternoon. My name is  
9 Aloke Chakravarty. I'm one of the prosecutors in the case.

05:37 10 THE JUROR: Yeah.

11 MR. CHAKRAVARTY: Some follow-up questions. Let me  
12 just start with that last issue that the judge raised about  
13 what you may have read about the defendant's claims.

14 Do you mean statements the defendant made?

15 THE JUROR: No. I don't -- I don't -- to be honest,  
16 this was a year ago, right? So it was April of 2013. So, you  
17 know, there was a lot of attention about it. And I read, for  
18 instance -- I think it was on *Slate*. I don't remember all the  
19 sources. But I remember reading about his family and how they  
05:37 20 had lived in different parts of Russia and they had come to the  
21 United States and what their life was like and some of  
22 the -- the older brother's -- I do remember the older brother's  
23 claims about hatred against Muslims and how the United States  
24 had been oppressive and that sort of thing. I don't remember  
25 his particular claims, if he -- I mean, reading whether he

1 specifically made these claims or not. But that's my  
2 impression, that he at least supported them to some extent.

3 MR. CHAKRAVARTY: So this period that you were  
4 actively learning about this case.

5 THE JUROR: Yeah?

6 MR. CHAKRAVARTY: What time period would you say that  
7 you were doing that?

8 THE JUROR: Right after the marathon -- the stories  
9 that came out, there was a lot of interest on, you know, what  
05:38 10 could have possibly led people to do this, how did it  
11 come -- and I was interested also because they're immigrants  
12 and they're white -- or at least perceived as white. And  
13 so -- because I teach immigrant politics, there's a lot of talk  
14 about, you know, Mexicans being criminals and the  
15 criminalization of immigrants, so I was very interested in how  
16 the media would portray these people.

17 And so I was interested in that, and that's why -- so  
18 I don't remember the exact timeline, but the months after  
19 whatever was written I probably read it, between May 2013 and,  
05:39 20 I don't know, August 2013, roughly, those months that came  
21 after?

22 MR. CHAKRAVARTY: And so your courses that you teach  
23 are in immigrant policies?

24 THE JUROR: Immigration politics.

25 MR. CHAKRAVARTY: Politics? Excuse me.



1 THE JUROR: Which is -- right now I'm teaching it,  
2 actually. And it's about what states do in response to  
3 immigrants coming. So I go through all of the different  
4 countries, the United States -- not all of the different  
5 countries, but the main countries -- in Europe, France, Spain,  
6 England, Sweden, Italy, so on. I don't do Russia. Maybe I  
7 should. Japan, Korea and so on. But I also -- and in my other  
8 class, international relations, I talk about migrant flows and  
9 things like that.

05:39 10 MR. CHAKRAVARTY: And do you talk about the asylum  
11 process in your --

12 THE JUROR: I do talk about the asylum process, yeah.  
13 That is not a main focus of it, but I do talk about it. Mostly  
14 Cubans, though.

15 MR. CHAKRAVARTY: I don't think we asked you what your  
16 course schedule is like this semester.

17 THE JUROR: I'm teaching two classes. Immigration  
18 politics is one; the other is Latin America politics, Tuesday  
19 and Thursday.

05:40 20 MR. CHAKRAVARTY: What time?

21 THE JUROR: 9:30 to 10:45 and 12:30 to 1:45.

22 MR. CHAKRAVARTY: Okay. And so if you're seated on  
23 this case, those times would have to change. Is that something  
24 that --

25 THE JUROR: Well, actually, I don't know that they

1 would -- I couldn't teach them. Somebody would have  
2 to -- actually, I have no idea what that would mean.  
3 Obviously, right, I couldn't teach.

4 MR. CHAKRAVARTY: That's a question for you.

5 THE JUROR: I don't know. I don't know the answer to  
6 that. Presumably the school would have to get somebody or they  
7 would have to cancel the classes.

8 MR. CHAKRAVARTY: Okay. You're an assistant  
9 professor? I'm just trying to get a sense of your tenure  
05:40 10 track.

11 THE JUROR: Yeah.

12 MR. CHAKRAVARTY: How does that --

13 THE JUROR: Well, I submitted the book, so hopefully  
14 they'll publish it, and I should hear within two months. And I  
15 have a few articles and -- a few articles that are out, so  
16 hopefully -- you know, I'm moving along.

17 MR. CHAKRAVARTY: So the classes issue should not  
18 hamper your career?

19 THE JUROR: No, the class issue should not -- no, it's  
05:41 20 the research.

21 MR. CHAKRAVARTY: So the question on the class issue  
22 is: Is it a hardship either to you or, you know, in the  
23 interest of your students if you --

24 THE JUROR: Yeah, I don't know the answer to that. It  
25 would be a hardship, but I have no idea what the school would

1 do. Like, can they teach -- can somebody teach immigration  
2 politics? I don't know. I don't know if they can get  
3 somebody. So presumably they would have to cancel the class,  
4 in which case that wouldn't be a hardship for me; it would be a  
5 hardship for 80 students: 40 students on immigration politics  
6 and 40 students on Latin America politics.

7 MR. CHAKRAVARTY: And you already started teaching?

8 THE JUROR: Yeah. We're a little bit behind, just  
9 like you are, with the snow. Just a little bit. But, yeah.

05:41 10 MR. CHAKRAVARTY: One more point on your study. This  
11 book that you wrote, remittances.

12 THE JUROR: Yeah?

13 MR. CHAKRAVARTY: Do you write about terrorism  
14 financing?

15 THE JUROR: No, nothing about terrorism. I am not a  
16 special- -- that is not my specialty. I have, I would say, a  
17 fairly positive view of immigrants in the book, even though I  
18 consider the possibility of -- I'll tell you about it if you  
19 really want to know. It's about social remittances, and it's  
05:42 20 the idea that immigrants can change the politics of their home  
21 country through connections and through social networks. And  
22 so it's a fairly positive thing, even though I consider the  
23 possibility that, quote/unquote, bad ideas can be transferred  
24 back. But it's a positive view.

25 MR. CHAKRAVARTY: That was my thesis in undergrad, so

1 I commend you for writing something scholarly.

2 THE JUROR: Very good.

3 MR. CHAKRAVARTY: All right. So I want to ask you a  
4 little bit about your wife's work.

5 THE JUROR: Yup.

6 MR. CHAKRAVARTY: The Proteus Foundation, is it?

7 THE JUROR: Yeah.

8 MR. CHAKRAVARTY: The death penalty is one of their  
9 causes.

05:43 10 You indicated that you've spoken about the death  
11 penalty with her. Ostensibly you've even --

12 THE JUROR: I attend it, yeah.

13 MR. CHAKRAVARTY: Yeah. So would you be able to  
14 consider -- just at the threshold stage are you -- would you be  
15 able to hold aside any of her convictions and your discussions  
16 with her, anything she may have said to you and what her  
17 response might be based on your actions in this case, would  
18 that not -- could you shield that from your decision-making?

19 THE JUROR: I could -- yes, I could hold my -- like  
05:43 20 talking about it or, you know, my conversations with her,  
21 whatever, but it would be hard to -- my own convictions about  
22 it because, like I said, if I could, I would abolish the death  
23 penalty today, right now.

24 MR. CHAKRAVARTY: And that's your independent --

25 THE JUROR: That's mine, yeah. That's mine.

1           She -- actually, I don't know if she feels stronger  
2           than me or not. I think she's probably exactly where I am.  
3           But, yeah, I could -- that's a good question. I don't know.  
4           I'll have to find out at some point. But -- yeah. Anyway...

5           MR. CHAKRAVARTY: And so it's fair to say you grew up  
6           generally opposing the death penalty based on just --

7           THE JUROR: Yeah.

8           MR. CHAKRAVARTY: I mean, you said you lived in  
9           Mexico.

05:44 10          THE JUROR: Yeah.

11          MR. CHAKRAVARTY: But had you actually contemplated  
12          the death penalty and your position on it when you were there?

13          THE JUROR: I was 12 when I came to the United States,  
14          so, no, I probably didn't think about the death penalty very  
15          often. And I indicated that I guess my position has softened  
16          over the years because, I don't know, you get older and wiser,  
17          I suppose. I don't know. But, you know, there are cases I  
18          suppose that could happen. But, yeah, I don't know -- I don't  
19          think I -- I don't think I thought about it very carefully  
05:44 20          before I came to the United States, but the change in coming  
21          from Mexico to the U.S. I think had something to do with my  
22          idea about it, if that makes any sense.

23          MR. CHAKRAVARTY: I think so. You just finished  
24          talking about the death penalty, and there are a couple of  
25          other points I wanted to make.

1 If you'd look at the questionnaire.

2 THE JUROR: Yeah.

3 MR. CHAKRAVARTY: I think you've been very clear in  
4 terms of where you are on the death penalty.

5 THE JUROR: Yup.

6 MR. CHAKRAVARTY: Question 95 asks whether you can  
7 impose it and --

8 THE JUROR: For the what?

9 MR. CHAKRAVARTY: I'm sorry. Page 25, Question 95.

05:45 10 THE JUROR: Yeah.

11 MR. CHAKRAVARTY: Reading that anew, is that still  
12 your answer?

13 THE JUROR: Yeah.

14 MR. CHAKRAVARTY: Okay. So it's in the middle; it's  
15 not a "no"?

16 THE JUROR: I don't know. I mean -- I don't know. I  
17 mean, the more I think about it, the more -- I don't know. The  
18 thing is, I think he's guilty. And so I suppose I could say  
19 yes, but I feel very strongly about the death penalty. So it  
05:46 20 would be a real dilemma for me. It would be a real moral  
21 dilemma. So, I don't know. If I had to say if I was leaning  
22 toward one or the other, I would say no.

23 MR. CHAKRAVARTY: So what this question's trying to  
24 capture is a distinction between the cognitive decision of  
25 whether it actually applies versus whether you could impose it,

1 but --

2 THE JUROR: Oh, I see what you're saying. So you're  
3 asking --

4 MR. CHAKRAVARTY: Hold on one moment while I just  
5 think about it.

6 Your Honor, I think we've heard -- we're satisfied  
7 that we've gotten the information, so instead of asking these  
8 questions, I'll just withdraw it.

9 THE COURT: All right.

05:46 10 MR. CHAKRAVARTY: Thank you very much.

11 THE JUROR: Okay.

12 THE COURT: That's it. Thank you.

13 THE JUROR: Thank you.

14 THE COURT: Just leave that.

15 THE CLERK: Just leave that. Thanks a lot.

16 THE JUROR: Good luck.

17 (The juror exits the courtroom.)

18 THE CLERK: Juror No. 454.

19 THE JURY CLERK: Juror No. 454.

05:47 20 (The juror enters the courtroom.)

21 THE CLERK: Sir, over here, if you would. Have a  
22 seat. Keep your voice up and speak into the mic.

23 THE JUROR: Okay.

24 THE COURT: Good afternoon.

25 THE JUROR: Good afternoon, your Honor.

1 THE COURT: Have you been able to avoid talking about  
2 the case or viewing media accounts about the case?

3 THE JUROR: I have.

4 THE COURT: Yeah? So we're going to follow up on some  
5 of the answers you gave us in the questionnaire when you filled  
6 it out.

7 THE JUROR: Okay.

8 THE COURT: And it's there for you if you want to  
9 follow along with us.

05:48 10 So you tell us in the questionnaire -- we had a  
11 question about employment, and you said you're disabled?

12 THE JUROR: Yes.

13 THE COURT: Can you tell us the nature of the  
14 disability?

15 THE JUROR: I have a back problem.

16 THE COURT: A back problem?

17 THE JUROR: Yes.

18 THE COURT: Is it something that you regularly take  
19 medication for?

05:48 20 THE JUROR: I don't anymore. I just had surgery  
21 recently and had it corrected.

22 THE COURT: So is it corrected so that you can stop  
23 being disabled or --

24 THE JUROR: Yes.

25 THE COURT: -- just to ameliorate it?



1 THE JUROR: No, it's eliminated.

2 THE COURT: Are you expecting to go back to work?

3 THE JUROR: I am starting to look for work now, yes.

4 THE COURT: Okay. And I think you were in the  
5 construction business somehow?

6 THE JUROR: Yes.

7 THE COURT: Can you tell us what you did before the  
8 disability? What kind of work did you do?

9 THE JUROR: Well, I started doing security work  
05:49 10 because of the back problem.

11 THE COURT: Right. That's fine. Tell us about that.

12 THE JUROR: I did that for a few years.

13 THE COURT: When was the last time you were able to  
14 work at any job? Approximately.

15 THE JUROR: It goes back many, many years.

16 THE COURT: Okay. And the only reason I asked about  
17 construction was I see you went to Wentworth.

18 THE JUROR: I did.

19 THE COURT: And did you enter that field at all?

05:49 20 THE JUROR: I didn't graduate. I was there for a year  
21 and a half, I believe.

22 THE COURT: Oh, I see. All right. So the last time  
23 you were employed you were in the security field?

24 THE JUROR: Yes.

25 THE COURT: That's, what, building security? Is that

1       what you mean? What kind of things were you doing?

2               THE JUROR: No, security in a building, protecting the  
3 building and the property.

4               THE COURT: Right. Right. Were you working for a  
5 security company or did you work for a particular manufacturing  
6 or institution or anything else like that and were on their own  
7 security force?

8               THE JUROR: A business. Filene's Basement.

9               THE COURT: Okay. So I think we started to ask about  
05:51 10 it. You're beginning to think about going back to work? Have  
11 you started actively looking for a job?

12              THE JUROR: I haven't yet, but I fully intend to.

13              THE COURT: Okay. You know, I guess from what we told  
14 you in the form, if you were to be a juror on this case it  
15 could be several months.

16              THE JUROR: Uh-huh.

17              THE COURT: That would probably interfere with your  
18 ability to find work. Would that be a problem for you?

19              THE JUROR: It would interfere, yes, but I'm prepared  
05:51 20 to serve if I need to.

21              THE COURT: Yeah? In a sense -- it would interfere in  
22 the sense that it might postpone the time when you might go  
23 back to work?

24              THE JUROR: Right.

25              THE COURT: Any other way?

1 THE JUROR: No.

2 THE COURT: So I guess the question is: Is it  
3 unreasonable to ask you to postpone going back to work on our  
4 part?

5 THE JUROR: I've been ready to serve if need be.

6 THE COURT: All right. As long as you have thought  
7 about it.

8 Let me ask you to go to page 20, Question 77. In this  
9 question we asked whether, based on things you'd seen or read  
05:52 10 in the media, you had learned -- or you had learned from other  
11 sources, had you formed an opinion that the defendant was  
12 guilty, and you checked "yes," Part A of the question. Do you  
13 see that?

14 THE JUROR: Yes.

15 THE COURT: And the second half, C and D, is whether  
16 he should receive the death penalty or not, and you said "yes"  
17 to Part C, right?

18 THE JUROR: Yes.

19 THE COURT: Just below that, then, we asked, "If you  
05:53 20 answered yes to any of these questions, would you be able or  
21 unable to set aside your present opinion and base your decision  
22 about guilt and punishment solely based on the evidence that  
23 would be presented to you in court?" And you checked "able" --

24 THE JUROR: Yes.

25 THE COURT: -- saying you'd be able to do that.

1 Can you tell us about that?

2 THE JUROR: I feel I would -- listen to the evidence  
3 and decide after that.

4 THE COURT: I presume you know that in a criminal  
5 prosecution the person who's accused of a crime is presumed to  
6 be innocent, or not guilty, unless the government proves him  
7 guilty beyond a reasonable doubt by the evidence at trial.

8 Are you familiar with those principles?

9 THE JUROR: Yes.

05:54 10 THE COURT: So what we ask jurors to do, even if they  
11 have some ideas from other sources, to make their judgment in  
12 the case based on what they have heard in the courtroom or seen  
13 in the courtroom and not on matters from elsewhere.

14 THE JUROR: Uh-huh.

15 THE COURT: Would you be able to assess the evidence  
16 alone and put aside any ideas you may have from other sources  
17 in thinking about whether the government has proved the  
18 defendant guilty of any charge or not?

19 THE JUROR: I feel I would be able to.

05:54 20 THE COURT: We asked a series of questions about the  
21 death penalty and attitudes toward it beginning on page 23,  
22 Question 88. 88 asked if you had any views about the death  
23 penalty in general, and you said, "I do favor the death  
24 penalty."

25 THE JUROR: Yes.

1 THE COURT: Anything you want to add to that?

2 THE JUROR: If it's appropriate, I believe in the  
3 death penalty.

4 THE COURT: Okay. In the next question we asked you  
5 to circle a number that indicated where you were on the scale  
6 from 1 to 10 where 1 was strongly opposed and 10 was strongly  
7 in favor, but if you look at the question, it was defined as --  
8 10 reflects a belief that the death penalty should be imposed  
9 whenever the defendant has been convicted of an intentional  
05:55 10 murder.

11 THE JUROR: Yes.

12 THE COURT: Let's go to the next question, Question  
13 90. And this asks you if there was a statement that you agreed  
14 with to indicate that. You selected E which says, "I am in  
15 favor of the death penalty, but I could vote for a sentence of  
16 life imprisonment without the possibility of release if I  
17 believed that sentence was called for by the facts and the  
18 law."

19 Does that represent your view?

05:56 20 THE JUROR: It does, yes.

21 THE COURT: Well, that's a little bit different from  
22 circling 10, because 10 was whenever someone was convicted of  
23 murder, and this seems to be that you'd decide based on the  
24 facts and the law of the case. Or maybe you don't think it's  
25 inconsistent.

1 THE JUROR: Can I reread this?

2 THE COURT: Yeah, go ahead. Take your time.

3 (Pause.)

4 THE COURT: And if you want, take a minute or two to  
5 read all of Question 90 and see if there might be some  
6 different statement you might choose as representing your  
7 views. Take a moment.

8 (Pause.)

9 THE JUROR: I'm still confused.

05:57 10 THE COURT: Well, forget the questions. Tell us  
11 whether you would be in favor of the death penalty anytime  
12 someone was convicted of a -- let me back up for a minute.

13 You understand that you're considering the question of  
14 what the penalty should be, death penalty/life imprisonment,  
15 only if the jury has convicted somebody of a capital crime such  
16 as intentional murder.

17 THE JUROR: Uh-huh.

18 THE COURT: So first you've already -- the jury's  
19 already agreed that the person is guilty, okay? So the  
05:58 20 question is what sentence is appropriate for this guilty  
21 person, right? And then the question is -- you heard me this  
22 morning talk about the so-called penalty phase where the  
23 government would try to produce evidence to convince the jury  
24 that there were certain aggravating factors about the case that  
25 made it worse than other crimes of murder and the defense would

1 try to present evidence of things about the defendant or about  
2 the circumstances that would suggest that the death penalty was  
3 not the right penalty but life imprisonment was a better  
4 choice.

5 Do you remember me describing that this morning?

6 THE JUROR: Yes.

7 THE COURT: So the question is: If you were a juror  
8 considering all that, would you tend, in a case where there was  
9 an intentional murder, to think that the death penalty is the  
05:59 10 right punishment regardless of other considerations, or would  
11 you evaluate the case based on the aggravating and mitigating  
12 circumstances and perhaps be open to either the death penalty  
13 or life imprisonment?

14 THE JUROR: I would evaluate the case.

15 THE COURT: And make a choice in either direction or  
16 gravitate toward the death penalty?

17 THE JUROR: Either.

18 THE COURT: Okay.

19 MR. WEINREB: Good afternoon, sir.

05:59 20 THE JUROR: Good afternoon.

21 MR. WEINREB: My name is Bill Weinreb. I'm one of the  
22 prosecutors in the case. I just wanted to follow up on a few  
23 of your answers in the questionnaire.

24 THE JUROR: Okay.

25 MR. WEINREB: So on page 8 of the questionnaire -- I'm

1 not going to ask about that -- Question 19 we asked whether any  
2 of your siblings has had a major positive or negative influence  
3 on your life, and you said your sister's been very helpful in  
4 every way. Can you tell us a little bit about that? What led  
5 you to give that answer?

6 THE JUROR: We've been close all our lives. If I ever  
7 needed anything -- if I need anything, I know she would be  
8 there for me or --

9 MR. WEINREB: She lives in the same town as you?

06:00 10 THE JUROR: Yes.

11 MR. WEINREB: Your back problem that you've had, has  
12 that prevented you from getting around or taking care of  
13 yourself in the sense of, you know, getting your groceries,  
14 cooking your meals and so on, or was it more the kind of thing  
15 that you just couldn't strain it?

16 THE JUROR: No, it was a very -- just a constant  
17 problem, night and day.

18 MR. WEINREB: And are there any lingering effects of  
19 it that would make it difficult for you to sit in a jury box  
06:01 20 day after day?

21 THE JUROR: No, after having surgery, that's  
22 completely corrected.

23 MR. WEINREB: Turning to -- you don't need to turn to  
24 your questionnaire if you don't want to, but in answer to  
25 Question 31, you mention that your father had served in the



1 Army. Was he -- did he serve in a war, do you know?

2 THE JUROR: World War II, yes.

3 MR. WEINREB: Which theater was he -- did he go  
4 overseas?

5 THE JUROR: He was in the Philippines.

6 MR. WEINREB: Do you know if he saw combat?

7 THE JUROR: He did not.

8 MR. WEINREB: What was his position in the Army?

9 THE JUROR: Private.

06:02 10 MR. WEINREB: And did he talk to you about his  
11 experience there?

12 THE JUROR: He told a few stories.

13 MR. WEINREB: Were they combat related at all?

14 THE JUROR: No, personal. Really funny, funny  
15 stories.

16 MR. WEINREB: Okay. And then in answer to Questions  
17 47 and 48, you talked about your previous jury experience in  
18 Cambridge, and you'd mentioned it was a good experience?

19 THE JUROR: Yes.

06:02 20 MR. WEINREB: What made it a good experience in your  
21 view?

22 THE JUROR: How?

23 MR. WEINREB: How was it good?

24 THE JUROR: Just I think the process is interesting.

25 MR. WEINREB: Did the jury deliberate a long time in

1       that case, do you know?

2               THE JUROR:   They ended up settling out of court.

3               MR. WEINREB:   So the jury never actually had to  
4       deliberate?

5               THE JUROR:   No.

6               MR. WEINREB:   In answer to Question 74 when you were  
7       asked what did you think or feel when you received your jury  
8       summons for this case, you wrote, "Mixed feelings."   Could you  
9       say what your feelings were and why you had mixed feelings?

06:03 10              THE JUROR:   I'm sorry.   The question again?

11              MR. WEINREB:   If you want, it's on page 19.   So it's  
12       Question 74.

13              THE JUROR:   Mixed feelings?   Because of my personal  
14       situation where I'm between working and just having surgery  
15       and -- I guess I hadn't decided whether I would be able to sort  
16       of -- since then I fully realize it's -- I lost my train of  
17       thought.

18              MR. WEINREB:   Well, we can come back to that.

19              In answer to Question 75 at the bottom of the page you  
06:05 20       said -- you were asked what kinds of things you said to others  
21       or they said to you, and just that it would most likely be a  
22       long trial.   Was that all there was that you could recall that  
23       anyone said or you said?

24              THE JUROR:   Yes, that's mostly what people were  
25       saying.

1 MR. WEINREB: So did you have mixed feelings about  
2 serving on the jury -- did those result from anything other  
3 than that you just finally got your back problem fixed and  
4 you're looking for work again and this was unexpected? Is  
5 there anything about the case itself that gave you mixed  
6 feelings?

7 THE JUROR: Possibly.

8 MR. WEINREB: Could you tell us about that?

9 THE JUROR: It's a very tough case. I knew it would  
06:06 10 be a long case, trial.

11 MR. WEINREB: Is there anything else that makes it  
12 tough?

13 THE JUROR: No.

14 MR. WEINREB: Okay. Thanks very much.

15 MR. BRUCK: Your Honor, I think we need to go to  
16 sidebar, but I wonder if we could possibly excuse the juror for  
17 a moment. I know it's not how we usually do it.

18 THE COURT: Okay. We'll have a sidebar with just  
19 counsel. If you could step out for a minute.

06:06 20 MR. WILSON: Audio off.

21 (The juror is excused.)

22 (Discussion at sidebar and out of the hearing of the  
23 public:)

24 MR. WEINREB: Your Honor, I don't think we can draw  
25 any conclusions about this juror's mental state based on his

1       affect, but he does seem quite uncomfortable about being  
2       here --

3               THE COURT:   Yeah.

4               MR. WEINREB:  -- and I just don't want to put him  
5       through a four-month ordeal that might be very unpleasant for  
6       him.

7               THE COURT:   I have the same --

8               MR. BRUCK:   We agree.  I didn't want to put him  
9       through ten minutes of the ordeal about his --

06:07 10              THE COURT:   Right.  I don't know what the explanation  
11       is.  I mean --

12              MR. WEINREB:  I was just hoping maybe we could get him  
13       to open up.

14              MR. BRUCK:   He's been disabled for 23 years.  It's not  
15       just his back.

16              THE COURT:   Yeah.  I think we can --

17              MR. WEINREB:  I think we can excuse him.

18              THE CLERK:   Can I tell him?

19              THE COURT:   Yeah, you can tell him he doesn't have to  
06:08 20       come back in.

21              So we'll go off the sidebar.

22              MR. WILSON:   Video and audio back on.

23              (In open court:)

24              THE COURT:   We're back live, just so you know.

25              MS. CLARKE:   Thank you.

1 THE CLERK: Juror No. 464.

2 THE JURY CLERK: Juror 464.

3 (The juror enters the courtroom.)

4 THE CLERK: Sir, over here, if you would, please.

5 Have a seat. Make sure you speak into the mic, okay?

6 THE JUROR: Yup.

7 THE COURT: Good afternoon.

8 THE JUROR: Good afternoon.

9 THE COURT: Thanks for your patience.

06:09 10 THE JUROR: Absolutely.

11 THE COURT: So since you were last here, have you been  
12 able to avoid talking about the case or as much as possible  
13 avoid media reports about it?

14 THE JUROR: Yeah. Sure, yeah.

15 THE COURT: So we're going to follow up on some of the  
16 questions you gave us in the questionnaire. I want to start  
17 with your work.

18 THE JUROR: Uh-huh.

19 THE COURT: You're an account manager for a tech  
06:09 20 company of some kind?

21 THE JUROR: Yes.

22 THE COURT: What's the nature of the equipment? You  
23 say you sell technology equipment?

24 THE JUROR: Yeah. So it's Internet security  
25 equipment.

1 THE COURT: Hardware?

2 THE JUROR: And software, yes.

3 THE COURT: Both?

4 THE JUROR: Yup.

5 THE COURT: You understand the schedule of the case  
6 that we've outlined?

7 THE JUROR: Yup.

8 THE COURT: And that's not going to be a problem for  
9 you?

06:10 10 THE JUROR: No.

11 THE COURT: Out of the ordinary? I mean, it's a  
12 problem for anybody.

13 THE JUROR: Yeah.

14 THE COURT: But it's not an unusual burden for you?

15 THE JUROR: Well, I'm a commissioned employee, so it  
16 would be a little burdensome, obviously.

17 THE COURT: You do have -- you know, we tried to  
18 structure it so people had some ability to keep up with work.

19 THE JUROR: Uh-huh.

06:10 20 THE COURT: One day a week anyway, and then evenings  
21 and so on. Does that help at all?

22 THE JUROR: Yeah. I mean, it's burdensome for anybody  
23 who's going to be on a jury. I understand that.

24 THE COURT: So it's something you're okay with?

25 THE JUROR: Yeah.

1 THE COURT: Okay. You told us that you had a couple  
2 of close friends who served in Iraq and one also in  
3 Afghanistan. Can you tell us about them? Take each one.

4 THE JUROR: Sure. So my next-door neighbor growing up  
5 served in both Iraq and Afghanistan, and one of my good friends  
6 from high school served in both Iraq and Afghanistan as well.

7 THE COURT: They were both in both places?

8 THE JUROR: Yeah.

9 THE COURT: And you said they both experienced combat  
06:11 10 while there?

11 THE JUROR: Yeah.

12 THE COURT: Was either of them injured?

13 THE JUROR: No.

14 THE COURT: Have you talked with them in detail about  
15 their experiences?

16 THE JUROR: Some level of detail, yeah.

17 THE COURT: Yeah?

18 You also -- I'm now on page 12. You also have some  
19 friends with the Arlington police?

06:11 20 THE JUROR: Uh-huh.

21 THE COURT: Your best friend, you say?

22 THE JUROR: Yes.

23 THE COURT: And tell us about them, those --

24 THE JUROR: So my best friend is an Arlington police  
25 officer for the past two or three years. He was called into

1 action in Watertown on the night -- a couple of nights after  
2 the marathon bombing. And so he was in there overnight, as  
3 well as a few of the guys he worked with.

4 THE COURT: Do you know what he was tasked with doing  
5 that night or what his activities were?

6 THE JUROR: I think they were all sort of just given a  
7 sector to monitor until they found --

8 THE COURT: Was he involved in the shootout?

9 THE JUROR: No, he wasn't. He was called in after the  
06:12 10 shootout.

11 THE COURT: Okay. And how about -- you have two other  
12 friends also on the Arlington police?

13 THE JUROR: Yeah, so I have a few friends who are on  
14 the -- I mean, a bunch of friends were on the Arlington police  
15 force: my best friend, and then a few other friends that I  
16 play softball with who were also called into action that night.

17 THE COURT: And have you talked with them about what  
18 they experienced and saw and so on that night?

19 THE JUROR: Yeah.

06:12 20 THE COURT: Why don't you take a look at page 12,  
21 Question 36.

22 THE JUROR: Sure.

23 THE COURT: You know, we typically instruct jurors  
24 they're to evaluate all the testimony by the same criteria, and  
25 that means not giving any special treatment one way or the



1 other to people because of their employment or background and  
2 so on.

3 THE JUROR: Sure.

4 THE COURT: And so we asked that particularly about  
5 law enforcement officers. You said that you might tend to give  
6 greater weight to the testimony of law enforcement officers  
7 than other witnesses?

8 THE JUROR: My answer is, I would say, yes.

9 THE COURT: Now, let me ask you to look at Question  
06:14 10 77.

11 THE JUROR: What page is that?

12 THE COURT: That's on page 20.

13 Here we asked whether -- based on things you'd seen or  
14 heard either from the media or perhaps other places, whether  
15 you had formed opinions about whether the defendant was guilty  
16 or not and whether he should receive the death penalty or not.

17 THE JUROR: Uh-huh.

18 THE COURT: With respect to Parts A and B, you  
19 answered that you had formed an opinion that he was guilty.  
06:14 20 Below that we asked if you answered yes to any of the  
21 questions, would you be able or unable to set aside your  
22 opinion and base your decision about guilt solely on the  
23 evidence that would be presented to you in court, and you said  
24 "unable." Can you explain that?

25 THE JUROR: Yeah, I think just from what I'd read and

1 heard and seen, you know, prior to being called in as a juror,  
2 I think I'd formed a pretty strong opinion, and I think it  
3 would be difficult for me to go back on sort of some of the  
4 beliefs I have about what transpired during the marathon  
5 bombing.

6 MR. BRUCK: We're satisfied, your Honor.

7 THE COURT: Okay. Thank you.

8 THE JUROR: Thank you.

9 (The juror exits the courtroom.)

06:15 10 THE COURT: So that's it for the questioning. Why  
11 don't we come back about 3:30.

12 MS. CLARKE: Great.

13 THE COURT: Okay?

14 MR. WILSON: Audio and video is off.

15 (The Court exits the courtroom at 3:03 p.m.)

16 (There is a recess in the proceedings at 3:03 p.m.)

17 (The Court enters the courtroom at 3:45 p.m.)

18 (Discussion at sidebar and out of the hearing of the  
19 public:)

06:58 20 THE COURT: So I think 412 and 435 were dealt with as  
21 we went along. I think that brings us to 441.

22 MS. CLARKE: No motion.

23 MR. WEINREB: No motion.

24 MR. BRUCK: That was no motion.

25 THE COURT: No motion?

1 444.

2 MR. WEINREB: Your Honor, that's a government motion.

3 MR. BRUCK: There's no argument.

4 MS. CLARKE: Without argument.

5 THE COURT: 447?

6 MR. WEINREB: Same thing, government motion.

7 MS. CLARKE: Same thing.

8 THE COURT: All right. 448?

9 MS. CLARKE: That's a defense motion, your Honor.

06:59 10 That's the Red Sox fan who --

11 THE COURT: Yes. The estate manager.

12 MS. CLARKE: There's three areas of concern that we  
13 wanted to express to the Court. First, I think she seemed like  
14 a very good person. I actually liked her, seemed very honest.  
15 But there are three sorts of impairments that we think  
16 disqualify her.

17 First, there's the level of emotion that she attaches  
18 to the events. She said, "I cried." "I felt numb." "I felt  
19 guilty." "Why did you feel guilty?" "I wasn't there." Now,  
07:00 20 Ms. Conrad was doing the questioning and was not allowed by the  
21 Court to follow up on what that actually meant and how she was  
22 actually affected, but there was, beyond most of the people  
23 that have qualified, a lot of somehow emotional reaction to the  
24 events. And particularly when she said, "I felt guilty that I  
25 wasn't there. I cried and I felt numb," that caused us a great

1 deal of concern about her level of attachment or reaction.

2 The second thing that is of concern is really not  
3 being allowed to get into her death penalty views. I know  
4 there was a lot of discussion about whether she was for or  
5 against the death penalty, and when we got into the -- she  
6 talked about, "Yes, I don't want somebody who is reliving the  
7 crime" -- "I think they should get the death penalty and I  
8 don't think others should." It was very confusing. And when  
9 Ms. Conrad tried to pin her down on "Are you talking about  
07:00 10 premeditated, intentional murder?" there was an objection about  
11 that, and whether or not that had a legal meaning or a  
12 practical meaning, and Ms. Conrad said something about, "Well,  
13 a planned murder" and that got stopped. So we were never  
14 really allowed to get into what she was thinking about her view  
15 on the death penalty.

16 But the third and final real problem was the final  
17 question by Ms. Conrad, was the mitigation impairment question.  
18 And she said, "No, I can't consider the defendant's background,  
19 character, other things about the defendant's life." And  
07:01 20 nobody followed up on that. That was just simply a, "No, I  
21 can't consider those things." So the combination, seems to us,  
22 disqualifies her.

23 MR. WEINREB: Your Honor, the government opposes the  
24 motion. With respect to her level of emotion, I mean, the  
25 Court was able to see her, and I don't think that she showed a

1 level of emotion that was particularly striking. What she said  
2 was that -- she was asked how she felt when she first heard  
3 about what had happened, and she said that initially she felt  
4 numb and that at a later point, thinking back on it, she cried.

5 But I mean, this was a shocking event to many people.  
6 And to initially -- to have your initial reaction to feel numb  
7 and to shed some tears over the death of some people is nothing  
8 that disqualifies somebody from jury service and, indeed, I  
9 think recommends them for jury service. It shows that they're  
07:02 10 human and they have the capacity for empathy.

11 There was nothing particularly about this event versus  
12 any murder that one might hear about on the news, like what  
13 happened in Newtown or anywhere else, that this juror might  
14 have had the same reaction to, so I don't see how that  
15 disqualifies her as a juror.

16 I disagree with Ms. Clarke about her assessment that  
17 the Court blocked thorough questioning about her views on the  
18 death penalty. I thought that that was explored pretty well  
19 with her. I mean, she may not have been the most articulate or  
07:03 20 precise in making distinctions about things, but through  
21 examples that she herself offered and through follow-up  
22 questions, she freely gave examples of aggravating factors that  
23 would influence her and others where she felt other factors  
24 would be mitigating factors. She at one point talked about  
25 lack of a motive as being a mitigating factor, she talked about

1 certain kinds of things as being aggravating factors, and  
2 almost unwittingly gave examples of exactly what jurors in  
3 death penalty cases are supposed to do, which was consider all  
4 the different factors. And that was the theme of her  
5 discussion about it.

6 And then finally, I dispute this -- the claim that she  
7 said that she could not consider any mitigating factors. That  
8 is not at all what Ms. Conrad asked at the end. What she asked  
9 specifically was in the case of a premeditated murder, could  
07:04 10 you take account of the defendant's background. And  
11 "background" is a very broad term. It embraces not only some  
12 things that might be legitimate mitigating factors but things  
13 that may be specifically excluded as mitigating -- as factors,  
14 like the defendant's race, his religion, his ethnicity and  
15 other things that also fall in the category of background. And  
16 nobody blocked any follow-up on that. Ms. Conrad thought that  
17 she had nailed this juror and that that was going to disqualify  
18 her, and she immediately said, "No further questions," and the  
19 juror was excused.

07:04 20 That one answer, I think especially to a very broad  
21 and ambiguous question, I do not think can undo or negate all  
22 the very clear answers she gave previous to that, that she is  
23 somebody who could weigh aggravating and mitigating factors and  
24 decide each case on its facts.

25 MS. CLARKE: If I might, just a couple of points. On

1 the question of getting under premeditated or planned, I think  
2 it was the juror who used the word "premeditated." What  
3 Ms. Conrad was trying to do was find out what she meant by  
4 "premeditated." And we got kind of off -- and I understand --  
5 is there a legal definition or a human definition.

6 The other thing, on the last question, my recollection  
7 of what Ms. Conrad asked was, "Would you be able to consider  
8 things about the defendant himself, like his background?" And  
9 she said, "No." So the record's pretty unambiguous on the  
07:05 10 mitigation impairment of this juror.

11 THE COURT: Just on that last point, the record might  
12 or might not be unambiguous, but it's unconvincing as well. We  
13 are constantly running into the phenomenon of laypeople who  
14 have not thought very deeply about these matters necessarily at  
15 all being asked to give rather precise answers, sometimes being  
16 asked in terms that we understand in a way that they may or may  
17 not understand it the same way. And I think to try to be too  
18 literal in the interpretation of the jurors' answers is a  
19 mistake. I mean, this is an assessment of whether a juror can  
07:06 20 be open as necessary to -- in the penalty phase either  
21 possibility, and my overall assessment of her is that she can  
22 be.

23 She seems like a very self-confident, experienced  
24 person if she ran the estate that she described, and, you know,  
25 supervising a staff and so on and so forth. She seemed to me

1 to be the kind of person that can do what she's tasked to do.  
2 And of course when we get to things like terms of art, she will  
3 have very specific instructions about what that means under the  
4 circumstances. And a word like "background," for example,  
5 would be explained in much greater specificity as to what can  
6 be considered and not considered. And of course that will be  
7 done in the light of what has been produced in the course of  
8 the trial that can be characterized as aggravating or  
9 mitigating, and the instructions will make a great deal more  
07:07 10 sense.

11 So what I'm looking for is somebody who I expect will  
12 respond correctly to those kinds of instructions on that body  
13 of evidence, and I think she can do that. So I would deny the  
14 strike.

15 452?

16 MR. BRUCK: No motion.

17 MR. WEINREB: No motion.

18 THE COURT: No motion? Okay. The afternoon was not  
19 productive, I think.

07:08 20 (Laughter.)

21 MS. CLARKE: It's all agreed, I think.

22 THE COURT: Anybody disagree with that?

23 MS. CLARKE: Well, productive.

24 THE COURT: It was interesting. We met some nice  
25 people, but...



1 MS. CLARKE: Okay.

2 THE COURT: So I think we have -- let's see. That's  
3 one, two, three?

4 MS. CLARKE: That's right.

5 THE COURT: Now, everybody's doing their best, but,  
6 again, we shrank down to a smaller number. And I don't  
7 discourage you from agreeing on the eliminations; I just would  
8 like to maybe make a little more progress. So I'm thinking of  
9 increasing the number to 25 for our pool for Tuesday. It will  
07:08 10 shrink to 15 and we'll be able to handle it, is my --

11 MS. CLARKE: That's the first time we won't be able to  
12 screen --

13 THE COURT: Well, I don't know.

14 Let me just call your attention to two -- I'm told  
15 there are two -- I had proposed some and I know the parties had  
16 agreed on some, and there were a couple of ones that I guess  
17 the parties do not agree with my proposal. And I just urge you  
18 to take a second look at it. 489 and 501. Actually, I think I  
19 left my note upstairs. I believe one is a -- it looks like a  
07:09 20 production-line laborer, if I'm thinking of the right one, and  
21 the other, I think, was an auto mechanic. I mean, they kind of  
22 fit in what we've been doing. There might be other issues; I  
23 don't remember. But just take another look at 489 and 501.

24 MS. CLARKE: 501 was a union member, so we didn't know  
25 whether he got paid or not.

1 THE COURT: Oh, because he was a tile guy, a  
2 bricklayer.

3 MR. McALEAR: Tile finisher.

4 THE COURT: Yeah, it was the bricklayers union. I  
5 know that because my grandfather was in the bricklayers union.

6 MS. CLARKE: Do they pay?

7 THE COURT: Not in those days.

8 (Laughter.)

9 MR. WEINREB: Sometimes the confusion with these  
07:10 10 arises because there's no claim of hardship.

11 THE COURT: Yeah. Yes, I was thinking about that.  
12 Although it's sort of appearing to me over the time that was  
13 our original marker, was that if they claimed it and it  
14 appeared to be valid in 26, it was an easy way to do it. I  
15 have developed a sense that people early on, being good  
16 citizens, said "no" to 10, and then as things got on, they got  
17 more accustomed -- I've seen a couple of them, I'm sure you did  
18 too, that we see the comment in the 70 series, 74 we'll see a  
19 comment, or in the 98 range they'll add it, but they won't go  
07:10 20 back and amend Question 10. So I'm not sure 10 is as reliable  
21 a marker as we may have thought.

22 So anyway --

23 MR. WEINREB: We'll take another look.

24 THE COURT: -- take another look at those two.

25 MS. CLARKE: Didn't we have another labor member or

1 two that did get paid?

2 THE COURT: I remember the thought occurring to me  
3 with a teacher -- I think she was excused anyway -- when she  
4 said her contract provided something. And it occurred to me it  
5 was at a collective-bargaining agreement or an individual  
6 contract. But I don't think we ever answered that question. I  
7 think there are -- there are laborers who kind of work through  
8 the union.

9 MS. CLARKE: Right, and they get paid.

07:11 10 THE COURT: The carpenters, for example, have that  
11 kind of arrangement. But anyway...

12 MR. WEINREB: So, your Honor, before you came in, so  
13 Mr. McAlear gave us the next 20 and then the next 10 after  
14 that. And we will get together over the weekend and see if we  
15 can agree on any more. And it would be useful if you could  
16 also review them --

17 THE COURT: I will.

18 MR. WEINREB: -- over the weekend.

19 And then Mr. McAlear said if we get him the results by  
07:11 20 Monday, he can backfill.

21 THE COURT: We can adjust accordingly. That's fine.

22 MR. WEINREB: So should we email -- how should we  
23 communicate? Should we email them to Jim or --

24 THE COURT: Yeah, we'll go through Jim. That's the  
25 easiest way.

1 MS. CLARKE: Right now that would take us through 504  
2 if we're calling in 25 to look at?

3 MR. McALEAR: Yup.

4 MS. CLARKE: And that's including 501 and 489, so...

5 THE COURT: Right. So that's adjustable too.

6 Let me also comment that the last fellow had multiple  
7 issues.

8 MR. WEINREB: We've discussed that he should have  
9 been -- he slipped through the cracks.

07:12 10 THE COURT: Yeah, that was a waste of time.

11 MR. WEINREB: That was a waste of time. We all agree  
12 with that. We'll take the hit for that.

13 MS. CLARKE: They're taking it. Sometimes we do.

14 THE COURT: The people on the sensitive issues, the  
15 77- and the 88-plus series, that's fine. We'll talk to all  
16 those people. But if there's somebody who has a cousin who was  
17 killed in Iraq and was affected by it or whatever, that's  
18 something that maybe we can...

19 A couple of just-while-I-have-you items. In addition  
07:13 20 to the *Globe's* motion to alter the arrangements, which we were  
21 about to -- I think we haven't filed it yet. We're about to  
22 file it, a disposition. They also filed a motion for access to  
23 the legal rulings on the things that we're doing here.

24 The time has passed for any response from the parties.  
25 I gather there is no response from the parties. We'll act on

1 that. I just wanted to confirm that, that we don't have to  
2 wait for anything on that?

3 MR. WEINREB: No.

4 THE COURT: Okay. We're getting close, I think, to  
5 completing this. If we don't get any more winter storms, we  
6 should be in pretty good shape.

7 MS. CLARKE: That's a big "if" right now.

8 THE COURT: I know. Well, fortunately this one is  
9 well-placed. It's right in the middle of the weekend. But  
07:14 10 there is talk of something perhaps later in the week. But I  
11 think we're getting pretty close.

12 So the time has come to start thinking beyond that,  
13 and one thing -- and I'm not asking for answers now. I just  
14 want to -- what I'm beginning to think about is once we have  
15 finished the jury empanelment, which can include the peremptory  
16 process, whatever we decide on that, whether it will be  
17 necessary to take some time to address any motions in limine  
18 that need to be resolved before openings and the beginning of  
19 evidence, and if we do, how much time we have to do for that.

07:14 20 We're getting inquiries from the press regularly.

21 Most people are not as interested in this process as they will  
22 be in the actual beginning of the case. And there are people  
23 who will travel to get here. And so we're constantly -- we're  
24 not -- but the people downstairs are constantly getting  
25 inquiries. And so partly out of just good relations we would

1 like to keep them up to speed a little bit without -- we won't  
2 tell them what we can't tell them.

3 So I just am interested in what you may be thinking  
4 about that. My thought is we might be able to -- once we  
5 figure out -- we'll still have to finish this because we have  
6 to know when the time breaks. But when we've done that, we may  
7 be able to pick a date and tell them this is the date we will  
8 swear the jury in, begin the case. So that's something to  
9 think of.

07:15 10 MS. CLARKE: Judge, we filed a while back a -- sort of  
11 in the -- it looked like a status report/in limine evidentiary  
12 issues, and we tried to set forth in that the ones we thought  
13 needed to be ruled on before openings.

14 THE COURT: Okay. If that needs updating --

15 MS. CLARKE: We can look at that again. And I think  
16 the government just responded to that.

17 MR. WEINREB: I think it may have been overtaken by  
18 events, and there are now more things to add to it, so...

19 MS. CLARKE: We should look at that.

07:16 20 MR. WEINREB: Yeah. Maybe the parties also can  
21 exchange lists of what we think are sort of the critical ones  
22 to be addressed before opening statements.

23 THE COURT: Well, that's it. I mean, stepping back  
24 from this case, every time we begin a case we get motions in  
25 limine. And I may think that it's -- about 20 percent of them

1 are worth ruling on before the case begins. A lot of them you  
2 have to wait and see how things are developing in the case.  
3 They're often contingent on developments in the case. Some  
4 clearly have to be done because somebody wants to say something  
5 about it in the opening.

6 So I'm interested in that group more than the ongoing  
7 group. We can deal with those as we need to.

8 MR. WEINREB: Sure.

9 THE COURT: So I don't know whether -- again, at some  
07:16 10 point we should consider once the jury empanelment process is  
11 over what sealed matters might be opened. We've had a lot of  
12 sealed things just to protect the process. There will be some  
13 things that I think will have to remain under seal until the  
14 conclusion of the case so they don't affect the trial, but  
15 there may be other things not in that category and we could  
16 deal with that.

17 For example, I would think that the transcripts of the  
18 voir dire would remain sealed through the trial because I think  
19 the cases say -- the First Amendment cases I think permit that.  
07:17 20 But I don't think it would be wise to have the voir dire  
21 transcript of a sitting juror available for publication. I  
22 think it will be an invitation to mischief, personal matters,  
23 things like that.

24 And finally on that -- thinking forward, I know that  
25 for the preliminary instructions both back in January and now

1     what I'm doing today you got together and made some proposals.  
2     I don't know if you're going to have similar proposals for  
3     opening instructions of the case itself. My practice in a  
4     run-of-the-mill case is not to give substantive instructions at  
5     the beginning of the case; it's really an outline of how we'll  
6     proceed and a little bit about the rules of evidence and why  
7     they'll see people objecting and me ruling and things like  
8     that. I mean, you've probably heard me do it. But I don't  
9     know if you have anything more specific about that.

07:18 10           It is the case in a run-of-the-mill case that I would  
11     read the relevant language of the indictment at the beginning  
12     of the case, you know, the man's charged with being a felon in  
13     possession of a handgun or something like that.

14           MS. CLARKE: We might have to add a day to the start,  
15     then.

16           THE COURT: But I don't intend to read this  
17     indictment. And I don't know whether you can think of an  
18     appropriate substitute that you would like to propose, that's  
19     all.

07:19 20           I guess for purposes of the record -- is this the list  
21     I'm supposed to read? I have to ask the boss.

22           (Laughter.)

23           THE COURT: Is this it?

24           LAW CLERK: That's one of them, yeah.

25           THE COURT: Do I have another one? Oh, this one?



1 This too? Yeah, okay. Just so it's on the record as to ones  
2 that have not been qualified for service, we'll start with  
3 today's -- well, other than -- I think we'll do it -- it  
4 doesn't include what we have here, right? What we just did  
5 this afternoon. I think we'll --

6 MS. CLARKE: Write it up?

7 THE COURT: -- write it up. I just want to be sure.

8 MS. CLARKE: Judge, I have one thing while we're here  
9 too. The Court indicated that there would -- its common  
07:20 10 practice is no back-strikes. Could the Court just again tell  
11 us what your plan is for striking?

12 THE COURT: So you fill --

13 MS. CLARKE: Except they won't be here.

14 THE COURT: Well, whatever.

15 MS. CLARKE: Yes. You fill a piece of paper or you  
16 fill a box.

17 THE COURT: Right. So there's -- let's just talk  
18 about 12 first, because then we can talk separately about the  
19 alternates.

07:20 20 MS. CLARKE: Sure.

21 THE COURT: You have 12 jurors. It comes peremptory  
22 time, both parties would come up. The government would go  
23 first and say, 2, 4, 6, 8.

24 MR. BRUCK: And the 12 jurors are the first 12  
25 qualified in order?

1 THE COURT: Yes, in order. Correct. We don't  
2 rejumble them once -- so I guess they'll follow this  
3 numerically. So consider them Seats 1 through 12, 2, 4, 6, 8.  
4 And then the defense goes 3, 5, 7, 9. All those people are  
5 excused, those seats are refilled in order.

6 MS. CLARKE: The seats aren't refilled until both  
7 parties have struck?

8 THE COURT: Correct. Right.

9 And so that was eight seats. So eight new people come  
07:21 10 into the box in those seats. The four who were not struck are  
11 done. They're on the jury. The eight new seats are subject to  
12 further strikes.

13 The second round the defense goes first, picks theirs,  
14 followed by government.

15 MS. CLARKE: Out of the eight?

16 THE COURT: Out of the eight.

17 So if seven are excused, seven new people come in. It  
18 goes back, first the government, then the defense. Now you've  
19 got three people left. And it keeps narrowing like that.

07:21 20 MS. CONRAD: Any limitation on the number of strikes?

21 THE COURT: No.

22 MS. CONRAD: Not two, two, two?

23 THE COURT: No, no, just do them all at once.

24 MS. CLARKE: Out of the 12?

25 THE COURT: And do as many as you want. You can

1 strike all 12 if you wanted.

2 Now, that brings up the question of how to deal with  
3 alternates in this case. In a run-of-the-mill case we would  
4 have 12 and two alternates, and it's easy to track the  
5 alternates. And as I said, my practice is just to advise  
6 everybody they will be the last two people seated and they  
7 could be in seats 3 and 11. We don't put them off to the side  
8 or anything like that. And a principal reason for that is they  
9 don't know who they are. There would be a few more here.

07:22 10 I was thinking about it in terms of what's allowed,  
11 which is 20 for the 12, plus three for the six alternates for  
12 each side, and that's 23. You could interpret that as meaning  
13 you get 20 to use on the first 12 and you only have three to  
14 use on the other six. That's a little -- I think more  
15 cumbersome, and if the parties don't object I'd just give you  
16 23 and you use them however you want.

17 I think there's some advantage to the parties in that  
18 latter approach because you can front-end a little bit more if  
19 you have to import one of the alternate ones to get somebody in  
07:23 20 the original 12 before we've gotten to the last six. You may,  
21 you know, be better off. You may get 21 for them rather than  
22 20 if you don't -- if you do the accounting that way. So  
23 maybe -- but I think it would be easier to do it that way.

24 But if you think we have to count separately, I guess  
25 we can do that. We can say, Okay. We haven't gotten to the

1 last six jurors yet. You only have 20, you're done, or  
2 something like that. I don't know. You can think about that.  
3 I don't know that there's any rule that affects that, but we  
4 could adjust it.

5 MR. WEINREB: So --

6 Did you have something?

7 MS. CLARKE: No, I was just trying to understand the  
8 process.

9 MR. WEINREB: So, your Honor, unless the Court is  
07:23 10 wedded to that particular system, we would like to propose a  
11 different system largely because that system does not seem to  
12 be well adapted to this particular situation where each side  
13 has so many strikes, 23 strikes. You only have 12 people in  
14 the box. And it also seems to have -- frankly, from our point  
15 of view, waste a lot of the work that the parties have put into  
16 trying to identify who we think would be the best jurors in the  
17 case because it puts a tremendous amount of emphasis on the  
18 people who are numbered 1, 2, 3, 4 versus people who may be  
19 more suitable as jurors further back in the pool.

07:24 20 And we propose a system where the parties just take  
21 turns striking two people from the pool at a time until we're  
22 all done with our peremptories, and that way --

23 THE COURT: You mean just on the master list?

24 MR. WEINREB: Just on the list of the 70 or however  
25 many are qualified. Right, and then they'll --

1 THE COURT: Starting at the beginning?

2 MR. WEINREB: No, just anywhere in the pool. Because  
3 the -- at this point we're going to know who they all are.  
4 We'll be able to identify them by number very easily.

5 THE COURT: So your first strike could be Number 70?

6 MR. WEINREB: Exactly. Well, except Number 70 would  
7 have no chance of being sat if --

8 THE COURT: All right. Number 64.

9 Well, I'm not so sure of that. That's why we have  
07:25 10 Number 70 --

11 MR. WEINREB: But at some point we'll have the pool.

12 THE COURT: Right.

13 MR. WEINREB: And that way it also seems fairer,  
14 frankly, because otherwise the -- again, the government's in  
15 the position of having to go first and potentially strike any  
16 number of people who we don't particularly object to just  
17 because we don't know -- without -- normally you know you're  
18 going to get to use up all your peremptories because you don't  
19 have very many to begin with. Here you would be risking  
07:26 20 forfeiting a lot of --

21 THE COURT: I think that's right. I think there's a  
22 possibility, if we did it the way I've outlined it, that  
23 neither side would use all their peremptories.

24 MR. WEINREB: But the parties are allocated this  
25 number of peremptories for a reason, and I assume the reason is

1 that when it comes to a case like this, there was the belief  
2 that the parties are entitled to have more say in who they  
3 think the jurors ought to be and have more chance to strike  
4 people who they believe really don't fit the qualifications of  
5 a juror in a death penalty case.

6 And so we're not really going to have as much of an  
7 opportunity to get the benefit of what Congress gave if we have  
8 to do it this way versus the other way.

9 THE COURT: Well --

07:26 10 MR. BRUCK: We think we're fine with the Court's  
11 proposal, but we would like to think about it over the weekend.

12 THE COURT: Yeah, think about it. It's new to me too.  
13 I don't know. I can't react to it. Will I entertain it? Yes.  
14 Will I do it? I don't know.

15 (Laughter.)

16 THE COURT: I'm not sure.

17 MS. CLARKE: Unsure. Maybe. Ask me tomorrow.

18 MR. BRUCK: The question is: Will you ever be able to  
19 say?

07:27 20 MS. CLARKE: Thank you very much.

21 THE COURT: Okay. Thanks.

22 (The Court exits the courtroom and the proceedings  
23 adjourned at 4:15 p.m.)  
24  
25

## C E R T I F I C A T E

We, Marcia G. Patrisso, RMR, CRR, and Cheryl Dahlstrom, RMR, CRR, Official Reporters of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of our skill and ability, a true and accurate transcription of our stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar A. Tsarnaev.

/s/ Marcia G. Patrisso  
MARCIA G. PATRISSE, RMR, CRR  
Official Court Reporter

/s/ Cheryl Dahlstrom  
CHERYL DAHLSTROM, RMR, CRR

Date: 2/13/15